



The Gazette of Meghalaya

PUBLISHED BY AUTHORITY

No. 7	Shillong, Thursday,	August 2, 2007,	11th	Shravana, 1929 (S. E.)
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PART - VII GOVERNMENT OF MEGHALAYA ORDERS BY THE GOVERNOR

NOTIFICATION

The 3rd July, 2007.

No.POL.40/2003/747.—The following Notification issued by the Government of India, Ministry of Home Affairs is republished for general information.

MINISTRY OF HOME AFFAIRS

New Delhi, the 21st May, 2007

No.S.O.789(E).—In terms of Section 4(4) of the Unlawful activities (Prevention) Act, 1967, the order, dated 14th May, 2007, of the Tribunal presided over, by Hon'ble Justice Raviandra Bhat, Judge, Delhi High Court, to whom a reference was made under Section 4(1) of the Unlawful Activities (Prevention) Act, 1967 for adjudicating whether or not there is sufficient cause for declaring the associations, namely the Achik National Volunteer Council (ANVC) and Hynniewtre National Liberation Council (HNLC) Organisations of Meghalaya as unlawful is published for general information :

REPORT OF THE UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL CONSISTING OF HON'BLE MR. JUSTICE S. RAVINDRA BHAT, JUDGE, DELHI HIGH COURT, NEW DELHI.

Ref :Ministry of Home Affairs Notification No.S.O.1974(E) New Delhi, dated 16th November, 2006.

1. By a Notification dated 16th November, 2006, the Central Government declared that it was, inter alia, of the opinion that for the specified reasons the Achik National Volunteer Council (hereafter called "ANVC") and Hynniewtre National Liberation Council (hereinafter called "HNLC") and the other bodies set up by them, are unlawful associations. The Central Government was also of the opinion that the activities of the ANVC and the HNLC are detrimental to the sovereignty and integrity of India, and if these are not immediately curbed and controlled, they would re-group and re-arm themselves, expand their cadres, procure sophisticated weapons, cause heavy loss of lives of civilians and Security Forces, and accelerate their anti-national activities. Accordingly, this tribunal was set up under the Unlawful Activities (Prevention) Act, 1967 (hereafter "the Act").

2. This Tribunal, constituted in terms of Section 3 of that Act, received the reference on 19th December, 2006, Exercising its powers under Section 4(2), the Tribunal issued notice to show cause to the Achik National Volunteer Council (hereafter called "ANVC") and Hynniewtre National Liberation Council (hereinafter called "HNLC"), returnable on 12th February, 2007. The Central Government was directed to serve notices upon those organizations at their addresses and also publish the notice in national and vernacular publications and newspapers with wide circulation in the area. The Central Government was directed to additionally give appropriate publicity in

the electronic media. The Director, Ministry of Home Affairs, Central Government filed an affidavit indicating compliance with regard to the service of its notices and its publication for both ANVC and HNLC. According to the affidavit, notices were served through publication in four different newspapers including local vernacular newspaper on 30th December, 2006 and 4th January, 2007. Notice were also broadcasted by All India Radio on three successive dates i.e. 29th, 30th and 31st December, 2006 in different languages i.e. Khasi, Garo, Jaintia and English. The notices were also fixed on the notice board of the Deputy Commissioners Offices in all the Districts of Meghalaya. The Court took on record the compliance report filed by Registrar to the Tribunal, evidencing that the notice was served and published in the different modes on 12th February, 2007. On the same date, the ANVC entered appearance before the Tribunal through its counsel.

3. The Tribunal had required the various parties to file their affidavits and documents. The ANVC filed its objections; however, there was no objection or representation on behalf of the HNLC. These facts were noticed in the proceedings on 28th March, 2007 and counsel for Central Government sought time for filing affidavit. The State of Meghalaya had filed affidavits. The matter was thereafter fixed for further proceedings at Shillong on 12th, 13th and 14th April, 2007. By then, the State of Meghalaya and Central Government had placed their affidavits, on record.

4. After the sittings in New Delhi on 28th, 29th March, 2007 and 2nd April, 2007, the Tribunal held sittings at Shillong, on 12th, 13th and 14th April, 2007, to facilitate recording of evidence of witnesses. Due publicity was given in "*Shillong Times*" and the local language newspapers; copies of those newspaper clippings are part of the record. Depositions of witnesses on behalf of the State of Meghalaya i.e. CW-1 to CW-16 and the depositions of some witnesses of objector, ANVC, namely, RW-1 to RW-3 were recorded at Shillong between 12th April, 2007 to 14th April, 2007. Affidavits of these witnesses were tendered during the proceedings at Shillong. The Tribunal recorded the evidence on behalf of the Central Government and the cross-examination of its witnesses on 19th April, 2007 in New Delhi. The further evidence on behalf of the ANVC i.e. RW-4 and RW-5 were recorded on 20th and 23rd April, 2007. The evidence and cross-examination of RW-5 was recorded on 24th, 25th 26th April, 2007.

5. The matter was listed for final hearing on behalf of the interested parties at Shillong on two days i.e. 6th May, 2007 and 7th May, 2007. Arguments were concluded on 9th May, 2007, at New Delhi. The ANVC was represented; throughout the proceedings, HNLC did not choose to present itself before the tribunal.

The reference from the Central Government

6. The reference received from the Central Government *reads* as follows :

"GAZETTE NOTIFICATION"

MINISTRY OF HOME AFFAIRS

New Delhi, the 16th November, 2006

No.S.O.1974(E).—Whereas the Achik National Volunteer Council (hereinafter referred to as the "ANVC") of Meghalaya have continued collection of funds and extortion despite having agreed to adjure violence and having expressed their willingness to hold talks within the framework of the Constitution of India for fulfilling their demands;

And whereas, the Central Government is of the opinion that the Hynniewtrep National Liberation Council (hereinafter referred to as the "HNLC") of Meghalaya have been openly declaring as their objective the secession of the State of Meghalaya from Indian Union.

And whereas, the Central Government is further of the opinion that both ANVC and HNLC have been, –

- (i) indulging in acts of intimation, extortion and looting of civilian population for collection of funds for their organization;
- (ii) maintaining links with the other insurgent groups of the North Eastern Region for carrying out acts of extortion and intimidation;

- (iii) maintaining camps in some neighbouring countries for the purpose of sanctuary and training of their cadres. And whereas the Central Government is also of the opinion that –
 - (i) the ANVC was involved four violent incidents in 2004, six violent incidents in 2005 and one violent incident in 2006 (upto 31st August, 2006);
 - (ii) these violent incidents by ANVC resulted in killing of 12 persons (including 4 Security Forces) in 2004 and one person in 2005;
 - (iii) the HNLC was involved in one violent incident in 2004, four violent incidents in 2005 and two violent incidents in 2006 (upto 31st August, 2006);

And whereas, the Central Government is also of the opinion that for the reasons aforesaid, the ANVC and the HNLC and other bodies set up by them, are unlawful association.

And whereas, the Central Government is also of the opinion that for the aforesaid activities of the ANVC and the HNLC are detrimental to the sovereignty and integrity of India, and if these are not immediately curbed and controlled, the said ANVC and the HNLC would re-group and re-arm themselves, expand their cadres, procure sophisticated weapons, cause heavy loss of lives of civilians and Security Forces, and accelerate their anti-national activities;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Achik National Council (ANVC) and the Hynniewtrep National Council (HNLC) alongwith all their factions, wings and front organizations as unlawful associations;

The Cental Government is of further opinion that it is necessary to declare the ANVC and the HNLC alongwith all their factions, wings and front organizations as unlawful with immediate effect and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of Section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette.

[F.No. 11011/49/2006-NE.III]

NAVEEN VERMA,
Joint Secretary."

The brief reasume forwarded along with the reference *reads* as follows :

“ A BRIEF RESUME REGARDING THE AIMS/OBJECTIVES AND VIOLENT ACTIVITIES OF ACHIK NATIONAL VOLUNTEER COUNCIL (ANVC) AND HYNNIEWTREP NATIONAL LIBERATION COUNCIL (HNLC) FURNISHED TO THE TRIBUNAL CONSTITUTED UNDER SECTION 5 OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967.

1. The Achik National Volunteer (hereinafter referred to as the “ANVC”) and the Hynniewtrep National Liberation Council (Hereinafter referred to as the “HNLC”) were declared as ‘unlawful association’ under the provisions of the Unlawful Activities (Prevention) Act, 1967 *vide* Notification Number S. O. 1974 (E), dated 16th November, 2006. Previously, a reference under sub-section (1) of Section 4 of the Unlawful Activities (Prevention) Act, 1967 was made to the Unlawful Activities (Prevention) Tribunal consisting of Hon’ble Justice Swatanter Kumar, Judge, Delhi High Court and the learned Tribunal *vide* its order dated 12th May, 2005 had confirmed the Notification dated 16th November, 2004 issued by the Government of India.

2. The ANVC was formed in December, 1995 with the aim of, among other things, Liberation of Garo Hills to achieve a new State of ‘Achik Land’ to prevent the influx of non-tribals and exploitation of Garos, to improve the living conditions and preserve the custom and traditions of Garos, to bring unity among the Garos and to strengthen Garo Hills Autonomous District Council under the Sixth Schedule of the Constitution. The outfit entered into an agreement for ‘Suspension of Operation’ with Government of India and Government of Meghalaya with effect from the 23rd July, 2004 intially for six months which had been extended periodically and is at present valid upto the 23rd July, 2007. With the signing of this Agreement, the outfit has agreed to abjure violence and has expressed it

willingness to hold talks within the framework of Constitution of India for fulfilling their demands. Although law and order situation in Garo Hills of Meghalaya has improved significantly since signing of this Agreement and the ANVC leadership in Meghalaya appears to be eager to have talks with Government, ANVC cadres continue to indulge in extortion and 'tax' collection. Self-styled Chairman Dilash Marak and Self-styled Commander-in-Chief Jerome Momin of ANVC have not directly involved themselves in peace process. Dilash Marak continues to stay and do business in Bangladesh along with his supporters. ANVC is also reported to maintaining links with United Liberation Front of Assam (ULFA).

3. The HNLC was formed in 1992 with aim of Liberation of Hynniewtrep People from the authoritarian rule of the Indian Government, protect the Khasis and other Meghalaya tribes from exploitation, retain the indigenous culture and to eradicate social evils. It also vows to fight against any attempt to divide Khasi society. Though the HNLC has not resorted to any major violent activity in the recent past and the violence by the outfit had declined significantly since the year 2004, it continues to indulge in extortion, kidnappings and abductions, especially in the Shillong Valley. The outfit has also given threat to non-tribals to move out of the State. The HNLC is also maintaining links with National Democratic Front of Bodoland (NDFB) and National Socialist Council of Nagaland (Issac/Muivah) (NSCN IM), The nexus of HNLC with NDFB expertise in carrying out explosions. The HNLC has been regularly giving calls for boycott of the Republic Day and Independence Day. It has also been asking people to observe Bandh on these days to mark protest against National days.

4. The area of influence of ANVC is spread over three Districts of Garo Hills and coal belt areas of West Khasi Hills District. Its present strength is estimated at 250, out of which 150 are lodged in Tura, West Garo Hills District and two designated camps at Samanda and Jetra in East Garo Hills District and South Garo Hills District respectively. The total weaponry of the outfit is estimated at 150 including 50–60 AK series rifles, 3 Light Machine guns, 5 Stenguns, 50 Pistols/Revolvers, 35 Rifles and 25 Shot guns, besides 200 grenades.

3.2 The HNLC is primarily operating in Khasi Hills of Meghalaya. It also maintains some camps in Bangladesh. The cadre of HNLC estimated at 100. The total weaponry of the outfit at present is estimated at 75 including around 30 AK series rifles, 2 Light Machine guns, 20 Carbines and Stenguns and 20 Rifles, besides around 80 hand grenades.

4. VIOLENCE PROFILE

4.1 During 2004, 2005 and 2006 (upto 31st August, 2006), the ANVC was involved in twenty four, six and one violent incidents. These violent incidents by ANVC resulted in killing of 12 persons (including 4 Security Forces) and 1 persons in the year 2004 and 2005 respectively. In the years 2004, 2005 and 2006 (upto 31st August, 2006), the HNLC was involved in one, four and two violent incidents respectively. In these incidents no one was killed.

5. JUSTIFICATION FOR CONTINUATION OF DECLARATION OF ANVC AND HNLC AS 'UNLAWFUL ASSOCIATION'.

5.1 The background of activities of the ANVC and the HNLC as given in preceding paragraphs, the proposal for declaration of ANVC and HNLC as 'unlawful association' under the Unlawful Activities (Prevention) Act, 1967 for a period of two years beyond 15th November, 2006 so that these two outfits do not get opportunity to rejuvenate themselves is being proposed :

- (i) Continued extortion and collection of taxes from businessmen of Meghalaya by ANVC despite the outfit having agreed to abjure violence and having expressed their willingness to hold talks within the framework of Constitution of India for fulfilling their demands;
- (ii) Openly declared objective of HNLC for secession of Meghalaya from India;
- (iii) Continued intimidation and extortion of civilian population by HNLC for collection of funds for their organization;
- (iv) Maintaining links with other insurgent groups of the North Eastern Region by both HNLC and ANVC for carrying out acts of extortion and intimidation;
- (v) Maintenance of camps by both ANVC and HNLC in Bangladesh for the purpose of sanctuary and training of their cadres.

5.2 Under the proviso to sub-section (3) Section 3 of the Unlawful Activities (Prevention) Act, 1967, if the Central Government is of the opinion that circumstances exist which render it necessary to extend the notification declaring these associations as 'unlawful', it may direct for reasons to be stated in writing that the notification shall have effect from the date of its publication in the Official Gazette. The activities of the ANVC and the HNLC are continuing and it is felt that if there is any delay in extension of the notification, these organizations may take undue advantage of the situation and mobilize their cadres for escalating secessionist, subversive and violent activities. It may also provide an opportunity to the leadership of these organizations to openly propagate anti-national activities in collusion with foreign powers inimical to India's security concerns. The Police and the Security Forces in such an eventually will find it difficult to detain and prosecute those militants apprehended by them. It is, therefore, considered necessary to extend the notification banning them for a further period of two years from the date of its publication in the Official Gazette. Accordingly a Notification S. O. 1974 (E) was issued by the Ministry of Home Affairs on 16th November, 2006 declaring ANVC and HNLC along with their factions, wings and front organizations as 'unlawful associations'.

Relevant provisions of the Unlawful Activities (Prevention) Act, 1967.

7. The Unlawful Activities (Prevention) Act, 1967 (hereafter called "the Act") defines, through Sections 2(o) and 2(p) as to what are "Unlawful Associations" and "Unlawful Activities". "Unlawful activity" has been defined as follows :

"2(o)" "Unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), –

- (i) which is intended, or support any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cessation or secession; or;
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India,"

Unlawful association has been defined as follows :

7. The Unlawful Activities (Prevention) Act, 1967 (hereafter called "the Act") defines, through Sections 2(o) and 2(p) as to what are "Unlawful Associations" and "Unlawful Activities". "Unlawful activity" has been defined as follows :

"2(p)" "Unlawful association", means any association, –

- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or
- (ii) which has for its object any activity which is punishable under section 153 A or Section 153 B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity; or of which the members undertake any such activity :

Provided that nothing contained in sub-clause (ii) "shall apply to the State of Jammu and Kashmir,"

8. Section 3(1) of the Act empowers the Central Government, if it is of opinion that any association is or has become an unlawful association, declare it to be unlawful through Notification in the Official Gazette. The Central Government, has to specify the grounds why the Association is unlawful Section 3(2). SECTION 3(3) indicates that a Notification issued under Section 3(1) would not have effect until the Tribunal constituted under Section 5 confirms the declaration and the order is published in the Official Gazette. The proviso to Section 3(3) enacts that the Central Government, if it is of opinion that circumstances exists which render it necessary to declare an association to be unlawful with immediate effect, it may, for reasons, to be stated in writing that the Notification shall, subject to any order which may be made under Section 4, have the effect from the date of its publication in the Official Gazette.

9. The Central Government, simultaneous by with issuance of the Notification under Section 3(1) has to refer the Notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association as unlawful. The Tribunal, constituted under the Act, is required to be comprised of a High Court

Judge, according to the mandate of Section 5. According to the provisions of Section 4(3) the Tribunal has to hold an inquiry, and decided whether or not there is cause for declaring the association concerned to be unlawful and make a report as expeditiously as possible and in any case within six months from the date of issue of the Notification under Section 3(1). The Tribunal can either confirm the declaration under Section 3(1) or cancel the declaration. Section 9 of the Act indicates that subject to rules framed under this Act, the procedure to be followed by the Tribunal shall be as far as made the procedure laid down by the Code of Civil Procedure, 1908 for the investigation of claims.

Evidence and Materials concerning HNLC.

10. The State of Meghalaya produced Affidavits of 9 witnesses besides documentary evidence. The 9 deponents were also examined before the Tribunal in support of the Notification issued by the Central Government under Section 3(1) concerning, the declaration that HNLC is an unlawful association. This evidence is supportive of the Central Government's evidence in that regard. The Central Government relied upon the deposition of CW-17, Shri R. R. Jha, Director, North East, Ministry of Home Affairs.

11. CW-1, Shri Fredrick Roy Kharkongor, Deputy Commissioner, Jaintia Hills District and working as such since 10th May, 2005, exhibited the affidavit executed by him on 17th March, 2007, as CW-1/1. He deposed that the HNLC was actively operating in Jaintia Hills District; members of HNLC in the District were indulging in unlawful activities, in spite of ban imposed by previous Notifications. The top ranking leaders of HNLC are in hiding in Bangladesh and running their activities from across the border. This includes intimidation and kidnapping against the public at large and also, particularly, directed against the business community. He further deposed that due to fear psychosis victim do not report cases. The witness further stated that HNLC has relationship and links with other banned groups of North Eastern States like the National Socialist Council of Nagaland [NSCN(IM)], National Democratic Front of Bodoland (NDFB) etc. The witness deposed that the ban has to a certain extent helped in curbing the activities of HNLC.

12. The second witness to depose was CW-2 Shri Heimonlang Nongphuh Superintendent of Police, Jaintia Hills District, Jowai; he identified his signatures on the affidavit, tendered on record as EX.CW-2/1, dated 17th March, 2007. He mentioned about an incident of 25th January, 2005 when Rs. 93 lakhs was looted involving HNLC cadres from Apex Bank, Khliehriat and lodging of P. S. Case No.7(1)05. Under Sections 395/397 IPC. He deposed about a incident on 25th March, 2005 where one Mon Bah Pradhan was kidnapped from Umlawang War Passah, Coal Quarry and was released after ransom money was paid to HNLC. He produced a copy of the FIR being P. S. Case No.24(3)05U/S364/34 IPC. The witness further deposed about an incident of kidnapping of one Raju Sharma, on 25th May, 2005. This led to lodging of an FIR, Jowai, P. S. Case No.65(5)05 U/S448/364/326/34 IPC. According to the witness since ransom money was not paid, the kidnapped person was killed. The witness further mentioned about arrest on 8th January, 2006, of one Bashembha Pathaw @ Commando @ Bahduh @ Bannah Pathaw from Moolber and recovery of 10 Chinese made AK-47 live ammunition. Apparently, he was found to be involved in 4 other cases concerning various cases under IPC as well as the Arms Act. The witness further deposed about surrender of six HNLC cadres in Jaintia Hills Districts during 2005-2006 i.e Pherlok Syngkrem @ Pher on 10th May, 2005 at Jowai P.S. without aims; Tarson Lymba surrendered at P. S. Dawki P. S. on 10th May, 2005, Hopeborn Shangpliang @ Bahrit on 20th January, 2006 before Jowai P. S. with one Chinese made 9mm pistol two magazines and 10 rounds of ammunitions; Hambad Biam on 4th February, 2006 at Jowai P. S. with one country made revolver; Nilan Sten on 4th February, 2006 at Jowai P. S. along with one country made revolver and Diamsalon Manner on 16th July, 2006, at Jowai P. S. without any weapon.

13. The witness deposed that HNLC and ANVC operate in the District but HNLC is more active. He alleges that NSCN(IM), the main supporter of the unlawful organizations is based in Bangladesh and it supplies arms and ammunition to train the cadres whose basic objective is to threaten the sovereignty and integrity of India and seek an independent State. Copies of a letter from the Meghalaya Co-operative Apex Bank Ltd., and copy of an order dated 20th March, 2006 directing the Preventive Detention of Bashembha Pathaw under the Meghalaya Preventive Detention Act 1995 were exhibited as part of his affidavit.

14. The CW-3, Shri Bhalang Dhar, Deputy Commissioner, East Khasi Hills District deposed next. He tendered his affidavit dated 17th March, 2007 as Ex.CW-3/1. In the affidavit he reiterated the nature of the activities of HNLC to be much the same as was deposed to by CW-1 and CW-2. He further stated that HNLC is active in the East

Khasi Hills District and its top ranking leaders are hiding in Bangladesh. According to him, HNLC has established good relationship with other banned, insurgent groups like United Liberation Front of Assam (ULFA), National Democratic Front of Bodoland (NDFB), NLFT, NSCN etc. The witness, in his deposition recorded by the Tribunal spoke about fear psychosis among the people and that HNLC was indulging in illegal arms activities, extortion, kidnapping and in one case, killing. The witness also stated the main target of the HNLC is the business community of the District. He reiterated about the links of HNLC with other banned organizations.

15. Shri Addison Roy Mawthoh, Superintendent of Police, East Khasi Hills deposed as CW-4. He exhibited the affidavit executed by him on 17th March, 2007 as CW-4/1. This witness mentioned details of several incident. He mentioned about kidnapping of one Manik Dey on 9th July, 2005 his being kept in Thyllaw village under Mawsynram Police Station and raiding of house at Lawbah village on 10th July, 2005 for rescue of the victim, firing by HNLC militants, exchange of cross fire and death of one cadre. He deposed that another cadre member escaped even though the kidnapped person was rescued. He mentioned about Mawsynram Police Station Case No.12(07) of 2005 and placed a copy of that First Information Report on the record of the Tribunal. The witness stated that recoveries of weapons such as revolver, three rounds of 9mm live ammunition, one hand grenade of Chinese make, DBBL gun (modified), a Rifle Barrel No.405 WCF and a Stainless Steel Draggar were made. The witness also deposed that HNLC had given a call for 24 hours Bandh on 14th August, 2005 and also on 15th August, 2005 asking the people not to participate in celebrations of the Independence Day. Copies of the news reports were also filed. The witness mentioned about an incident dated 22nd September, 2005 where one Pratul Chandra Deka received a note demanding Rs. 3 lakhs along with a bullet leading to ambush somewhere at Barik and an arrest of HNLC cadre named Peaceful Ricky Sohtun. This led to filing of FIR being P. S. Laban Case No.53(09) of 2005 under Sections 384/506/34, IPC and filing of a charge sheet on 28th November, 2005. A copy of the charge sheet has been produced on the record. Similarly he mentioned about an incident of 23rd December, 2005 involving one Teilang Thangkhiew and his arrest, recovery of one 9mm pistol with magazine loaded with 7 rounds of ammunition, leading to registration of the Rynjah Police Station Case No.75(12) of 2005 for offences under Sections 121(A)/120 IPC, Sections 25(IA) of the Arms Act and Sections 10/13 of the Unlawful Activities (Prevention) Act. This led to filing of charge sheet on 6th July, 2006. A copy of that charge sheet had been produced on the record of the Tribunal. The witness further deposed about a Bandh call for boycott of Republic Day celebration for 24 hours from 25th January, 2006 to 26th January, 2006, given by HNLC. He deposed that on 14th February, 2006 HNLC in a press release stated that it would not accept the Constitution of India. According to the witness, on 26th March, 2006 one Aibor Marwein of Mawlai, Shillong was shot dead by suspected HNLC cadre. It led to registration of Police Case No.16(3)/06 under Section 302 IPC and Section 25(IA)/27(2) Arms Act. A copy of that FIR had been produced on the file of the Tribunal. It was stated that HNLC had issued a press release stating that it would continue with its armed struggle and that it had on 1st June, 2006 issued warning through a press release that it would take deterrent action against any person participating in the election to the Shillong Municipality. The witness deposed that on 6th July, 2006 the Police arrested from the Hill Star Hotel, Police Bazar, Shilling, one HNLC cadre named Kampher Frankly Syiem who had been working as a cook in the HNLC camp, and from his possession, some incriminating documents relating to the banned HNLC were recovered and seized, leading to the registration of the Shillong Sadar Police Station Case No.128(07) of 2006 under Section 10/13 of the Unlawful Activities (Prevention) Act 1967.

16. CW-4 deposed that on the eve of the Independence Day celebration of 2006, the HNLC gave a call for 24-hours bandh effective from 6 : 00 P.M. on 14th August, 2006 to 6 : 00 P.M. on 15th August, 2006, to protest against the celebrations of the Indian Independence Day in the Hynniewtrep land and asked the people not to participate in such celebrations. This call given, resulted in the general people suffering from fear psychosis, as in turn the normal lives of the people during the celebration got disturbed. On 1st September, 2006 an information was received by the police from Shri Rahul Jasararia of M/s. Radio Electrical, Mawkhar, Shillong, that on 29th August, 2006, at about 3 : 30 P.M., he received a telephonic call from one person who identified himself as an HNLC cadre, directing him to pay Rs. 10,00,000 (Rupees ten lakhs) by 5th September, 2006, leading to the registration of the Lumdiengjri Police Station Case No.109(9) of 2006 under Section 384/511 IPC.

17. The witness deposed that a group of HNLC cadre were taking shelter in Umkrem village and therefore a raid was conducted on 20th September, 2006 at about 5 : 00 A.M. by Police in the village. In this operation, according to witness, an encounter took place due to firing from inside a house at the Police Force. The Police retaliated in self defence and an encounter ensued. During the encounter, one of the cadre were killed and another,

namely Shri Wanpynshngain Dynpep @ Bah Jop (19 years), of Mawlai lewrynghep, Shillong, was arrested. Shri Westmorland Lamin (35 years), was also arrested for harbouring the HNLC militants. The HNLC cadre killed in the encounter was identified as Shri Bankit Khongjee @ Leit. He was earlier arrested on 27th September, 2001 and 23rd January, 2002 for illegal arms possession. From the place of occurrence and from the possession of the militants arrested, the following seizures were made, namely :-

- (i) One number modified Stengun with magazine;
- (ii) One number carbine with magazine;
- (iii) Forty rounds of 9 mm live ammunition; and
- (iv) Eight numbers of empty cases of assorted ammunition.

Consequently the Pynursla Police Station Case No.14(09) of 2006, under Section 353/307/120(B)/121/121(A)/123 IPC read with Section 25(1-a)(1-b)/27 Arms Act was registered.

18. CW-4 also mentioned that on 25th September, 2006, at about 9 : 00 AM, the Police raided the house of one Shri Tom Jones Rynjah; a hardcore HNLC cadre at Mawlai Syllaikariah, Shillong, and arrested him. During the search in his residence, a demand note of the HNLC letter head addressed to Shri Bishan Nongrum, demanding Rs. 5,00,000 (Rupees Five Lakhs) was recovered, which led to registration of the Mawlai Police Station Case No.44(9) of 2006 under Section 384/511 IPC read with Section 10/13 of the Unlawful Activities (Prevention) Act. He stated that the HNLC is active in the East Khasi Hills District, which has a long international border line with Bangladesh, as the top cadres of HNLC are hiding in Bangladesh from where they operate their unlawful, nefarious and anti-national activities. The cadres of the organization are engaged in raising funds by issuing demand notes to members of the business community as per the instructions of their top leaders from across the international border. According to him, apart from the incidents mentioned specifically, there were at least 10 other un-reported incidents. People do not pursue and report all incidents due to fear psychosis. He stated that the illegal activities indulged in by the HNLC include extortion, kidnapping, murder and intimidation. He stated that the previous ban had led to curbing activities of HNLC to some extent.

19. The next witness examined by the Tribunal was CW-5, Freeman Kharlyngdoh, Deputy Commissioner, District West Khasi Hills. He identified and tendered his affidavit dated 17th March, 2001 as Ex. CW-5/1. According to him, HNLC and ANVC are operational in West Khasi Hills and that they were reportedly keeping illegal arms and ammunitions in sizeable quantity in various hide out to achieve the objective of subverting and disrupting of sovereignty and territorial integrity of India. It was also stated that members of both organizations collect funds illegally by use of threats which was continuing and that extortion of money from people including businessmen was still being carried on by ANVC and HNLC cadres. HNLC cadres are operating in Nongjri, Umbar, Nonghyllam, Pormawdar and Maweit areas. He reiterated the contents of his affidavit and also stated that the organizations are indulging in various illegal activities in coal rich areas and that the business community is the main target of the two organizations. The witness stated that cadres of both organizations take shelter outside India, in Bangladesh. According to him, the ban had resulted in effective control of the activities of the organizations. When cross examined, by council of ANVC, he admitted that he joined as Deputy Commissioner on 15th January, 2007.

20. CW-6, Dalton P. Marak, Superintendent of Police, West Khasi Hills District, Nongstoin deposed both in respect of ANVC and HNLC. He identified and tendered his affidavit dated, 17th March, 2001 Ex. CW-6/1. The evidence as regards the ANVC was that its cadres were involved in six incidents leading to arrests. He mentioned about details of such incidents, and FIRs lodged. In his cross examination by council for ANVC, he admitted knowledge about the mechanism of joint monitoring group, under the ceasefire settlement, and denied that names of persons mentioned by him in the annexure to his affidavit were not ANVC members. He named three persons and said that according to their admission, they were ANVC members. As regards the HNLC, he alleged that it continues with its activity of arms struggle with a view to disrupt the sovereignty and territorial integrity of India and keeps sizable arms and ammunitions. He also stated that HNLC cadres operate in Nongjri, Umbar, Nonghyllam, Pormawdar and Maweit areas. He further stated that the two organizations extort money from the business class and indulge in dacoities, thefts, attack on police parties.. HNLC has direct nexus and links with

the NSCN(IM) and NLFT. those organizations support HNLC by training the cadres and other support to it to undermine the security and peaceful living in the State. The witness in his deposition also mentioned about an incident where two cadre members died in an encounter and one arrested in 2006. He deposed in support of two cases mentioned in a list filed along with his affidavit. The first case concerned an incident dated 22nd June, 2006 where HNLC cadres fired at the police party at Honghyllam village which led to exchange of fire and death of two un-identified HNLC's suspect cadres and escape of the rest. This incident led to recovery of one Carbine with six rounds of live ammunitions, one revolver with five rounds of .32 ammunitions and other incriminating documents. An FIR being Mawkyrwat P.S. Case No.13(6)06 under Section 333/307/353 IPC read with Sections 10/13 UA(P) Act and Section 27 of Arms Act, was filed. The second incident was related to Mawkyrwat P.S. Case No.26(11)06 under Sections 120(B)/387 IPC read with Section 10/11 UA(P) Act. A raid was conducted on the resident of Morning Hahshah of Nongjri Village on 18th November, 2006 and recovery of two demand notes by the HNLC signed by the Finance Secretary of the HNLC. The witness reiterated all these allegations in his examination-in-chief before the Tribunal while tendering the affidavit on the record.

21. CW-7, Sankey Ford Khongwir, Deputy Commissioner, Ri-Bhoi District deposed next; he supported the affidavit dated 17th March, 2007, produced as Ex.CW 7/1. Shri Jainal Rymmai, Superintendent of Police, Ri-Bhoi District deposed as CW-8. He too supported his affidavit dated 17th March, 2007 which is Ex.CW 8/1. Both these witnesses spoke that HNLC is active in Ri-Bhoi District and its cadres carry on unlawful activities which go un-reported due to fear psychosis by its cadres. CW-7 mentioned about relationship of HNLC with other groups such as ULFA, SDFB, KNV (Karbi National Volunteer) etc.

22. CW-8 produced materials by way of list (Ex. CW 8/2) giving specific instances. On 8th June, 2005, one Kalenderson Wanniang @ Marmet @ Bat of the Finance Wing of HNLC was arrested from a jungle near Umjarsi village and a demand note of HNLC signed by its Finance Secretary, demanding Rs. 50,000/- from Woodland Cafe was recovered. This led to his arrest and disclosure about distribution of demand notes to several other businessmen and filing of Nongpoh P. S. Case No.45(6)03 under Sections 120B/121/121A IPC read with Sections 10/13 of the Unlawful Activities (Prevention) Act. He also mentioned about another incident of 11th June, 2005 of surrender by Sumarland Kharmujai @ Hep Jep, a finance wing cadre of HNLC to Superintendent of Police, Ri-Bhoi and handing over of a letter authorization dated 1st April, 2005 on HNLC letter head signed by its Chairman Julius Dorphan and Finance Secretary Ianek Skhem Shylla authorising him to negotiate with persons against whom demand notices were issued. A list of all firms to whom demand notes had to be distributed and mention of amounts; receipt books of the Sohpetbneng Youth Club, were recovered. It was stated that HNLC had called for Bandh on National days including on 26th January, 2006, 15th August, 2006 and 26th January, 2007. This led to fear psychosis restraining freedom of movement of the people, for celebrating such occasions. The witness lastly stated in his list that according to intelligence reports, HNLC cadres seem to garner support from other organizations in Assam in their bid to regroup and strengthen their weaponry.

23. Smti Rebecca Vanessa Suchiang Commissioner and Secretary to the Government of Meghalaya deposed as CW-9; She identified her affidavit dated 17th March, 2007, as CW-9/1. The witness deposed that HNLC was actively involved in unlawful, nefarious and anti-national activities in the Districts of East Khasi Hills, West Khasi Hills, Jaintia Hills and Ri-Bhoi, Meghalaya. The principal object of HNLC is to achieve a separate State which will not be a part of Union of India. The Witness deposed about some incidents in which HNLC was actively involved. During the 2005, 2006 and 2007. Republic day and Independence day functions HNLC called for a 24 hour bandh and threatened people not to attend the functions. The general public did not attend the celebrations anticipating trouble. The witness deposed that HNLC is active in Khasi and Jaintia Hills, which has a long international border with Bangladesh. She deposed that the top leaders of HNLC are hiding in operating from Bangladesh. The witness deposed that HNLC maintains good relations with other banned insurgent groups like NSCN, ULFA, NDFB and NLFT, and receives training from those groups.

24. The witness deposed that HNLC mainly targets the business community they are involved in extortion. During the year 2005 HNLC cadres were arrested and in the year 2006, 21 of them were arrested. 1 AK Rifle, 1 303 Rifle, 2 Shotgun, 1 Pistol, 1 Revolver, 30 Ammunitions, 1 empty Magazine, 1 Hand grenade were recovered in the year 2005 and 3 Carbine, 1 Pistol, 3 Revolvers, 31 Ammunitions, 2 empty Magazine were recovered in the year 2006. The witness filed copies of the notifications in various news papers declaring the two organization as unlawful. The notifications are dated 16th November, 2006. She has also filed a list of violent/unlawful activities the ANVC cadres were involved in and the arrests made in the year 2005-2006.

25. Shri R. R. Jha, Director to the Government of India in the Ministry of Home Affairs deposed as CW-17. He identified his affidavit dated 29th March, 2007 tendered as Ex. CW-17/1. The witness deposed that HNLC's aim is to liberate the Hynniewtrep people from the authoritarian rule of Indian Government, protect the Khasis and other Meghalaya tribes from exploitation, retain the indigenous culture and to eradicate social evils. The outfit reiterated its right to armed struggle. The witness deposed that the organization threatens people not to participate in national celebrations, it calls for bandhs on these days. People anticipate trouble and do not attend them. The witness also stated that the organization is involved in unlawful activities like coercion, extortion, particularly from the coal sector in Khasi, Jaintia areas. The organization indulges in extortion from the business community, looting civilians to collect funds for their outfit, intimidation and kidnappings. They have links with the other banned insurgent groups of North Eastern States for procurement of arms and ammunition. The top leaders of HNLC stay in Bangladesh; they run camps which include training camps. The witness, in the examination in chief, deposed that imposition of ban on HNLC by the previous notification enabled the Central Government to effectively take steps towards counter insurgency operations. The same is the case of a previous ban relating to ANVC. The ban was imposed with immediate effect to ensure that there was no gap in effectively curbing the operations of the organizations and also to prevent them from regrouping.

Evidence concerning ANVC, led by the State of Meghalaya and the Central Government.

26. CW-10, Smti Rebecca Vanessa Suchiang, Commissioner and Secretary to Government of Meghalaya, Political Department, Shillong deposed on behalf of the State of Meghalaya. She tendered her affidavit dated 17th March, 2007, as Ex. CW-10/1. The witness deposed that the ANVC indulges in criminal activities by harassing people and engaging in acts of intimidation and extortion particularly from non-tribal businessmen. ANVC also uses power to extort money from the business community. It is attempting to capture business activities in Garo Hills by intimidation. Their activities are not only confined to three Districts of West, East and South Garo Hills, but its cadres are also active in West Khasi Hills, ANVC extorts money from businessmen in Tura and other places in Garo Hills by criminal intimidation. Senior leaders of ANVC force coal dealers to buy P-forms and DMR challans in East Garo Hills at highly inflated rates from their agents without any authority from the Department. Some of the toll-gates in Garo Hills are indirectly controlled by ANVC. The clandestine operations by members of the organization for collecting funds through illegal use of veiled threats is still carried out. The witness deposed that an incident of January 14, 2005 illustrates that ANVC cadres terrorized people for their own vested interest. People are scared to report against them. According to the witness, following a Cease Fire agreement, the State Government urged the ANVC to give up its unlawful activities and surrender all arms and ammunition. They are presently kept at liaison office of ANVC at Tura. Intelligence reports reveal that top leaders of ANVC have links in Bangladesh and have established safe houses. They have concealed their arms and ammunition in Bangladesh. ANVC has forcefully taken control of many District Council gates in three Districts of Garo Hills. They have made it mandatory for each coal dealer to donate truckloads of coal to them.

27. CW-10 deposed that ten members of ANVC Cadre deserted the camps with weapons in May and October, 2005 and April, 2006. The deserters formed two organisations, namely ACHIK National Liberation Front Army (ANLFA) in East and South Garo Hills and Achik National Youth (ANY) in West Khasi Hills. The witness also stated that 13 Cadres of ANVC including deserters were arrested in 2005-2006 and 2 AK Rifles, 1 SLR, 3 Pistols, 3 Revolvers, 139 ammunitions, 12 Grenade and 7 empty Magazines was recovered. In the examination in chief, she stated that both HNLC as well as ANVC have links with banned/unlawful associations such as ULFA, NLFT, NDFB and NSCN(IM). The ban imposed by the earlier notifications has impacted by restoring the confidence of people, restricting the movements of the organizations which are by and large confined to outside the territory of India.

28. The witness was cross examined. She stated that approval of the State Cabinet was not obtained before her affidavit was filed in the Tribunal; no approval required as it did not involve a policy decision by the Cabinet. There was a tripartite agreement, signed between the Government of Meghalaya, Government of India and ANVC for suspension of operations of ANVC. The initial suspension was for a period of 6 months; it was extended time and again. The extension of suspension of operation and the validity of the agreement were without consent of the State Government of Meghalaya. She clarified that there was no objection to it. The parties to the agreement expressed satisfaction at the observance of ground rules by ANVC. In the cross examination, the witness stated that the objective of ANVC is to achieve statehood through armed struggle and that any activity involving conflict

and disruption of existing territorial integrity or affecting sovereignty and integrity of India is unlawful. The State of Meghalaya has a list of members of ANVC, the list is not an exclusive (sic exhaustive?) one. The initial list contained 105 names and a later list contained 202 names. In reply to a query, the witness stated that weapons possessed by ANVC ought to have been kept in a neutral place but they were kept at a ANVC liaison office, in Tura. She further deposed that there were discrepancies regarding the weapons surrendered and kept in joint custody and details of the missing items. As per the ground rules governing suspension of operations ANVC cadres are to be unarmed; but few move around with weapons. There are also deserters from ANVC cadres. The missing weapons which are supposed to be in the joint custody in the premises of ANVC and the existence of such deserters, speak about the unreliability of ANVC's intention.

29. CW-10 deposed further in cross-examination that ANVC cadres collect funds by extortion from businessmen, shopkeepers, industrialists and entrepreneurs of the three Districts of East Garo Hills, West Garo Hills and South Garo Hills. They indulge in kidnapping for ransom, which also include high profile kidnapping. They create fear psychosis amongst the people. The targets of ANVC have been mostly non-tribals; they also imposed annual tax on all businessmen/traders ranging from Rs. 2,000 to Rs. 1 lakh and asked them to clear all payments by 15th December, 2006. The ANVC had submitted a list of 202 cadres out of which only 120 cadres stay in the designated camps; the top leaders never stay in the designated camps. The outfit deposited only 16 weapons. Rest of the weapons are still in their possession. ANVC is indulging in extortion by collecting donations from coal traders and other target groups. The deserters left the organization with AK-47 rifles, self loading rifles, magazines and chinese hand grenades. The deserters were two different groups; they formed different organizations namely ANLFA, ANY based in West Khasi Hills. ANVC does not have any control over these organization. ANVC is active in Garo Hills and aims at enhancing its financial capabilities. Its cadres create fear psychosis amongst people. ANVC has been involved in social and cultural policing and also settling disputes.

30. Shri Pamu Sampath Kumar, Deputy Commissioner, West Garo Hills, District, Tura, Meghalaya, deposed as CW-11. He tendered his affidavit dated 17th March, 2007, as Ex. CW-11/1. According to him, ANVC actively carries out its unlawful activities in West Garo Hills District. He stated that ANVC intends creation of a greater Garoland by armed struggle; the business community is its main target. It has links with other unlawful organizations including National Socialist Council of Nagaland (IM), [hereafter "NSCN (IM)"] United Liberation Front of Assam ("ULFA") and National Democratic Front of Bodoland ("NDFB") who supply arms and ammunitions to it. ANVC has its headquarters in Bangladesh from where it operates regularly. Its cadres are engaged in raising funds by issuing demand notes to the business community. The witness in his examination in chief deposed that ANVC is active in his District. Its objective is to achieve a separate Garoland through armed struggle. He stated that the cadres have good relations with the other banned organizations across the border. ANVC is involved in unlawful activities like kidnapping, extortion, killing and terrorizing people. They target people who do not support their point of view. The witness further deposed that the ban had the beneficial effect of weaning away misguided youth from participating in such violent and unlawful activities.

31. The witness, in his cross-examination, deposed that the Garos inhabit the West Garo Hills. ANVC does not have support of any sections of Garo Community. There have been instances and cases of violation of ground rules involving violence after the agreement to suspend operations was entered into between various parties. Except five cases, many other cases were unreported due to fear psychosis. The witness deposed that the acts of violence are reported to the review committee to facilitate co-ordination for State's issuance of Identity Cards and ironing out other related issues concerning the ANVC Cadres who had to stay in the designated camps. The primary objective of the meeting is to counsel and bring home the benefits of abjuring violence and not to straight away point out the violation of ground rules agreed upon. He stated that this was the reason why demands for extortion etc. were not highlighted in the meetings. The witness narrated an incident dated 25th August, 2005 where the Joint Secretary of ANVC along with some Cadre members forcibly entered the Chambers of District Magistrate, in violation of ground rules and its cadre members were wearing Camouflage dresses. The witness deposed that the possibility of some others using the name of ANVC to further their ends is remote, as they are afraid of the consequences. The witness also agreed that ANVC had deserters.

32. Mr. Jerrey Fiscer K. Marak, Superintendent of Police, West Garo Hills, Tura, Meghalaya, deposed as CW-12. He tendered his Affidavit dated 17th March, 2007, as Ex. CW-12/1. The witness stated that ANVC is a banned organization and carries out unlawful activities. He narrated a few incidents. On 15th February, 2006

ANVC Cadres were seen at Kalaichar Bazar when they started demanding money from members of the business community. They demanded Rs. 3,000 from Teer Counter and took Rs. 1,000 that day. This led to lodging of FIR Mahendraganj P. S. Case No. 6(2) 2005 U/s 384 IPC. The witness narrated about another incident which occurred on 17th February, 2005, when an ANVC Cadre, i.e. Shri Kochol K. Marak @ Adam @ Rikson was arrested while he was collecting the remaining demanded money. This led to the lodging of an FIR Mahendraganj P. S. Case No. 6 (2) 2005 U/s 384 IPC against him. The third incident narrated related to Shri Tonang D. Sangma, a cadre member who came to Latrigre Tri junction on a scooter and asked the complainant Shri Dukrant M. Sangma to collect Rs. 200 each from all Teer counters of Ampati Bazar. The complainant collected Rs. 200 from each counter and gave him Rs. 1,800. This led to lodging an FIR Mahendraganj P. S. Case No. 8 (2) 05 U/s 384 IPC.

33. The witness narrated an incident where Shri Wanding K. Marak, General Secretary (ANVC) threatened Garo Hills District Council (GHADC) members for allotment of toll collection from hats/bazaar which are under GHADC to their proxy candidates, he also coerced Tura Municipal Board Officers to secure toll collection contracts of the Municipality in the name of the ANVC candidates. On the day fixed for Auction ANVC members were present, and the general public returned, due to fear. The ANVC cadres create a fear psychosis in the minds of general public. The witness narrated an incident of 5th April, 2006, when at 11 PM, ANVC Cadres, namely Remke B. Marak, Chonbat Ch. Momin and Charlie Sangma assaulted their colleague Dambil C. Marak with a Wooden Stick at Youth Hostel, Tura as a result he sustained grievous injuries and succumbed into his injuries. The accused fled the place with small arms, they were arrested and an FIR dated 14th February, 2006 at Tura Police Station case No. 39 (4) 06, U/s 302/201 IPC was lodged. The witness narrated few other incidents to show the presence of ANVC cadres create psychosis and fear to the people. The locals do not give any statement out of fear. He also assumes that in view of the prevailing circumstances it is important to impose further ban of the organization at least for another term of two years for improving the prevailing situation in the District.

34. CW-12 deposed that in West Garo Hills both HNLC and ANVC are active; yet the latter is more active. The Objective of ANVC is to achieve Garoland through armed rebellion. They are involved in unlawful activities like extortion, criminal intimidation and harassing the public; they are attempting to capture business of Garo Hills by intimidation. There are cases against the ANVC Cadres. Many go unreported due to fear psychosis. The witness deposed that during 2005-2007, 3 ANVC Cadre members were arrested but no arms were recovered from them. The business community is targeted by ANVC and they (ANVC) have links with banned associations. ANVC is involved in imparting arms training to its personnel and the Cadres wear camouflage uniform. During examination in chief, he produced Ex. CW-12/2 and CW-12/3 wall calendar and table calendar, published by ANVC; the former contained photographs and images of its cadres, with details of names, showing them in battle or combat dress, informations and also being trained. CW-12/3 was marked; it is a copy of a document titled "Army Formation Achik National Volunteer Council" in Garo; its English translation was produced and marked by the witness as CW-12/4. These were marked without objections on behalf of ANVC.

35. The witness deposed that a Nodal Officer maintains contacts with the leaders of ANVC. The Nodal Officer is Inspector General of Police level. The senior leaders of ANVC are permitted to carry small fire arms, but they cannot carry them in public places, they are permitted to do so for personal safety, ANVC is not co-operating with the police in tackling other banned organizations. ANVC makes demands from the business community and imposes tax on the sale of very commodity in Garo Hills. ANVC has imposed a ban on the sale of DTH (Direct to Home). Technology which affected all people in Tura. ANVC controls cable operation business in the District. ANVC also imposed a tax of Rs. 5 per kilo on the sale of dried fish in Tura. People are scared to report the incidents due to fear psychosis.

36. Smti Renilla D. Marak, IAS Deputy Commissioner South Garo Hills deposed as CW-13 she tendered her Affidavit dated 17th March, 2007 as Ex. CW-13/1. She stated that ANVC is an unlawful organization with its top leaders hiding in Bangladesh and operating from there. The cadres of the organization are used for raising of funds by issuing demand notes to the business community; fund raising by way of extortion is one of their major activities. ANVC has established good relations with other banned insurgent groups of other North Eastern States like NSCN-(IM), ULFA, NDFB. The witness deposed in her examination in chief that in South Garo Hills both HNLC and ANVC are active but ANVC is more active. Their objective is to create a Garoland through armed struggle. The ANVC is involved in unlawful activities like extortion, killing and intimidation of members of public. Non-tribals and local businessmen are targeted for extortion. People are scared to report all the incidents. The

witness also deposed that due to intimidation by ANVC, shopkeepers in Tura do not sell DTH equipment to the residents in Municipal area of Tura. ANVC has a control over the cable business also but the shopkeeper do not openly divulge this threat but agree that there is a problem by account. The witness deposed in her cross-examination that in 2006 there were some violent incidents, reports of extortions to coal traders in Nongalbibra were made. She also stated that the FIR in her affidavit, relates to a deserter from ANVC.

37. Shri Heimond Toi, MPS, Superintendent of Police South Garo Hills District, Baghmara deposed as CW-14. He tendered his affidavit dated 17th March, 2007 as Ex. CW-14/1. He narrated an incident of 2nd May, 2005 where cadres of ANVC fired their with pistols. M/s Wasa D. Sangma and three others fired at Shri Chipson Marak and Johurul Islam with 9mm pistol, seriously injuring the victims. Later on, Police raided their hideout and live 9mm ammunition and 3 Chinese made hand grenade were recovered from their possession. This led to the filing of Baghmara P. S. Case No.20 (5) 2005 U/s 307/326 IPC read with Section 25(1)(A) Arms Act. The witness deposed that ANVC cadres terrorise people who are scared to report to the police as the militants still have their weapons with money. He deposed that ANVC continues to extort money from the business community by involving 3rd parties. The outfit is trying to capture all business activities in Garo Hills. The cadre members commit various crimes like kidnapping, murder and encounter with police; their main object is to extort money. People do not report to the police due to fear. The witness deposed that ANVC has links with other North Eastern banned insurgent groups. ANVC has its headquarters in Bangladesh and the organization is operated from there. The witness deposed that in South Garo Hills, Bagmara District with HNLC and ANVC are active, ANVC is more active. ANVC is involved in extortion, intimidation and creation of terror amongst the people. People do not report incident due to fear. Four cadre members of ANVC were arrested as they were indulging in unlawful activities, further there has been no arrest and there has been no recoveries of arms from any other Cadres of ANVC persons. ANVC threatens the business class and also Nokma i.e. Headman of the village. The witness further deposed that ANVC also threatens Government Officials. Its cadres are largely concentrated in coal areas of Nangalbibra. ANVC has contacts with HNLC; it is also based in Bangladesh. ANVC Cadres have Identity Cards, copies of those were placed on record. ANVC Cadres maintain multiple identities and they change their names frequently. They make new recruits often. The witness deposed that the cadres of ANVC are kept in designated camps. The witness on being confronted with the documents of (monthly review meeting dated 8th December, 2005) stated that he is unaware whether previous S. P. South Garo Hills requested ANVC to assist the police by submitting information of whereabouts of six ANVC deserters from the designated camps. He deposed that ANVC and its cadres are not supposed to carry arms, yet recoveries of arms were made.

38. Shri Onesimus Pasi, MPS, Superintendent of Police, East Garo Hills, Williamnagar deposed as CW-15 and tendered his affidavit dated 17th March, 2007 as Ex. CW-15/1. The witness deposed that ANVC cadres indulge in extortion; they demand money from coal traders, gate operators and other businessmen. They forcefully took control of many District Council gates in three Districts of Garo Hills. In order to gain sympathy of the people they purchase vehicles, ambulance, by using extorted money and donate them to the people. In one instance a Maruti Van ambulance was donated to the Mothers Care Society of Rongjeng and the vehicle handed over to Smti Surdha M. Sangma, an executive member of the Society. The vehicle, purchased in the name of Pesat A. Sangma of Tura was subsequently seized by Police, when it was found that it was used by cadres of ANVC for carrying on their nefarious and unlawful activities. This led to Rongjeng P. S. Case No.11 (4) 05 U/s 11/13 ULA (P) Act. The ANVC cadres on 8th August, 2006 were apprehended by the Army personnel at Damas Village and two 9mm pistols with live ammunitions were seized from their possession. A case was registered in Mendipathar P. S. case No. 34 (8) 06 U/s 25(1-A)(I-B) Arms Act. The witness further deposed that ANVC cadres are involved in illegal felling of trees from reserve forest and moving them through Samanda Prapgra Road. They are also involved in a lot of killings and people do not report them as they are scared. The witness deposed that in East Garo Hills ANVC and HNLC are active, but of the two, ANVC is more active. It is involved in kidnapping, murder, abduction and all these have caused fear psychosis amongst the public at large. The cadres are involved in killings and various FIR's have been lodged at P. S. Williamnagar U/s 302/201 IPC. The main supporters of these banned organizations in East Garo Hills are ULFA, NDFB, {NSCN(IM)}, Arms training and supply is the main help of these organizations. He stated in his examination in chief that the basic objective of ANVC is to achieve a separate sovereign state outside the Indian Union through armed struggle. There are cases involving ANVC and its personnel. All instances are not reported due to fear. The unlawful activities of ANVC include extortion, kidnapping and murder. They carry banned weapons and impose ban on the celebrations, observance of national festivals such as Independence day and Republic day. They target the business community and public who do not fall in the line with their dictates.

39. The witness deposed, in his cross examination, that there are three designated camps of ANVC and one such is located in his District. Many cadres do not actually stay in the camp. There are deserters from the camps. The witness further deposed that the cadre targets business community boycotts several occasions and has links with several banned insurgent groups.

40. Mr Synrem, IAS, Deputy Commissioner, East Garo Hills, Williamnagar, Meghalaya deposed as CW-16. He tendered his affidavit dated 17th March, 2007 as Ex. CW-16/1. The witness deposed that ANVC is actively involved in unlawful activities in East Garo Hills. Its top leaders hide in Bangladesh. They carry their activities from across the border. Cadres of the organization are engaged in fund raising activities, by issuing demand notes to the business community. They have good relations with other banned groups of North Eastern States like ULFA, NSCN(IM), NDFB. The witness deposed in his Chief Examination that in East Garo Hills, Williamnagar both HNLC and ANVC are active but ANVC is more active. The main aim of the organization is to achieve a separate state through armed struggle. They are involved in extortion, kidnapping, murder and other anti-social activities; these activities restrict people from actively participating in national festivals. Most of the incidents go unreported due to fear and adverse consequences. The witness further deposed the ANVC Cadres operate in the District but their top leaders are cross International border, in Bangladesh. ANVC targets business community, police and general public.

41. The witness deposed in his cross examination that the last time ANVC called for bandh and boycott of Independence Day and Republic Day celebrations was in the year 2004. The witness further deposed that he is unaware and unable to state where joint meetings were held with ANVC Cadres. The witness disagreed that the real motive or objective of banning ANVC is to prevent it from joining and participating in mainstream political activities.

42. R. R. Jha, Director of Government of India in the Ministry of Home Affairs, CW-17, also spoke about ANVC; he tendered his affidavit dated 29th March, 2007 as Ex. CW 17/2. The witness deposed that ANVC was formed on 24th September, 1996 from its fore runner Achik liberation Matgrik Army (ALMA). The objective of ANVC is creation of separate state of Garoland comprising of three Districts of Garo Hills of Meghalaya, West Khasi Hills and Ri-Bhoi Districts. The demand has prompted enmity between Khasis and Garo's. For achieving its objective, the outfit had been intimidating state functionaries of public, raising funds through extortions, kidnappings, robberies, indulging in establishing bases in remote areas and also have been maintaining good relations with other banned groups. The witness deposed in his Chief Examination conducted by the Additional Solicitor General that the imposition of ban on HNLC by the previous notification enabled the Central Government to effectively take steps towards counter insurgency operations. The same is the case of a previous ban relating to ANVC. The ban imposed with immediate effect to ensure that there was no gap in effectively curbing the operations if the organizations and also to prevent them from regrouping. The witness also identified another affidavit tendered as Ex. CW-17/3 which enclosed a copy of the ANVC constitution, framed in 1996.

43. The witness deposed in his cross examination that he does not speak, write/read or understand Garo language. He deposed that he went through the English translation of the ANVC Constitution. ANVC has a constitution of its own. The witness deposed that in a meeting of 11th July, 2006, the Central Government asked the ANVC to furnish a complete list of its Cadres. The ANVC provided a list of 202; out of these 120 stayed in the camps. The list of weapons according to Central Government estimation exceeds 150; a list of only 16 weapons was provided.

Evidence on behalf of ANVC.

44. Mr Raphael Ch. Marak deposed as RW-1. He identified his affidavit dated 12th April, 2007 tendered as Ex. RW-1/1. The witness deposed that he is a Joint Secretary of United Achik Peace Forum (hereafter referred to as "UAPF") which represents almost all church leaders of Garo Hills. The witness deposed that the membership of UAPF comprises of ten members. He stated that the main objective of the Organization is to promote peace in Garo Hills by conducting regular meetings of the leaders of the Society. The witness further deposed that the ANVC has been trying to ensure that the peace should return back to the region. He further stated that his organization played an important role in continuing the truce between ANVC and Government. According to his knowledge, ANVC never threatened anyone or demanded money by way of extortion. He further stated that ANVC is trying to achieve its objective by peaceful negotiations. The witness deposed in his chief examination that the

objective of ANVC is achieving statehood for Garo people and the objective of United Achik Peace Forum is to promote peace between the Government of Meghalaya and ANVC. He further stated that ANVC has not threatened or demanded money from anyone. The witness deposed that if the Garos have a separate state for themselves it will promote peace because the present composite state comprises of different tribes and people, and is not conducive to the nature of the Garo people who are not securing a fair share of development in the existing set up. The ban on ANVC should be lifted for the benefit of Garo people.

45. In cross examination, the witness deposed that he was aware of an incident involving police firing in Garo Hills on 30th September, 2005; after that incident efforts were made to resolve the differences between the Government and all the factions. This involved participation by various denominations of the Church groups such as Roman Catholics, the Pentecostal Church and the American Baptist denominations. He stated that Church and related services try hard to achieve peace between ANVC and members of other communities. He deposed that ANVC does not threaten and extort money, from people; that ANVC and UAPF have met on three occasions at the Auditorium of Garo Hills, Tura as a part of peace initiative and the main objective of his organization is to promote peace. The witness further in his cross examination deposed that ANVC is not active in his region, i.e. Bishop Campus Area, Tura, Garo Hills. He stated that the incident dated 30th September, 2005 which led to the death of some children, was due to police firing. He stated that ANVC cadres do not possess any weapons and he is not aware as to where they hidden their arms.

46. Mr Raknang S. Sangma, deposed as RW-2. He tendered his affidavit dated 16th November, 2006 as Ex. RW-2/1. The witness deposed that he is a Secretary of Garo Hills Labour Union, Headquartered at Tura and the Labour Union consists thousand members. The witness stated that he has close interaction with members of the Labour Union who are mostly non-tribals and those people have no complaints against ANVC for threatening or intimidating them for any cause. He further deposed that ANVC is promoting the interest of people living in Garo Hills and they seek a separate state to improve the conditions of the people living in Garo Hills.

47. The witness deposed in his cross examination that the Union members are around thousand in number. Registration fee of Rs. 100 is obtained from new members at the time of their joining the Union. The Union is a registered association, the voting for office bearers is by raising hands and not by secret ballot. The problem faced by workers and labourers in Garo Hills include disputes relating to wage fixation, abuse and conflict with members of public, interse disputes and influx of workers from outside areas particularly from across the border. The majority of members are non tribals; if there is any threat by the ANVC to the non tribal members of the Union then it is forwarded to the Union by the concerned members. ANVC's involvement has resulted in reduction on incidents of looting, gambling and drunkenness. The witness further deposed that he is not aware about the activities of ANVC. Cadre members of ANVC visit the region where he resides often and they do not carry any weapons. He is not aware about the sources of funds to ANVC.

48. Mr Parman R. Marak, deposed as RW-3. He tendered his affidavit dated 16th November, 2006 as Ex. RW 3/1. The witness deposed that he is President of the Garo Hills Traders Union, Tura which has its objective to promote and safeguard the interest of the traders of the region. He stated that the association represents both tribals and non-tribals. The ANVC has not been indulging in any activity which is directed against traders living in Garo Hills. The witness deposed the cadres of ANVC have not demanded money nor have threatened or harassed traders. The witness deposed that he was selected as President of the Union in a process where members raised their hands and there was no secret ballot. The activities of the Union are mainly ensuring welfare of the Traders and its members. The Union collects Rs. 200 per membership as registration fee and there are about thousand members. The activities of the Traders Union is to assist its members during times of difficulty and also extend financial help to the family members in case of any distress or emergency. The membership of the Union comprises of approximately 50% of Garo's and balance are non-tribals. The witness deposed that the traders do not face to many problems; some times they are faced with troubles by drunken youth. Whenever such information is received, the Union visits the spot and tries to counsel such trouble makers. The witness deposed that he is unaware ANVC lodged any objections to the notification proposing a ban.

49. The witness deposed in his cross examination that he is not aware of the day to day activities of ANVC. He is not even aware of the office bearers; he has not seen ANVC cadres in his area for long. No members of the Association have mentioned about demand money or threats or harassment by ANVC.

50. Mr Wanding K. Marak, General Secretary, ANVC, deposed as RW-4. He tendered his affidavit dated 13th April, 2007 as Ex. RW-4/1. The witness deposed that ANVC was formed on the 20th December, 1995 and he has been the General Secretary since 1998. The objective of the organization is creation of separate state of Garoland comprising the District of Garo Hills of Meghalaya and the areas predominantly inhabited by the Garo (West Khasi Hills and Ri-Bhoi Districts of Meghalaya, Goalpara and Kamrup District of Assam). The witness deposed that Garo's must have a separate State for shaping their own destiny in respect of political, social cultural, ethnicity, education spheres. The witness deposed that ANVC entered into an agreement for suspension of operation with Government of India and Government of Meghalaya intially for six months. Meetings were held on several occasions, in the meeting dated 17th January, 2005 ANVC clarified that none of its cadre member were indulging in unlawful activities and the police should take action against anybody using ANVC's name for extortion. The witness deposed that they were not recruiting any new cadres. It was decided in one of the meetings dated 18th July, 2005 that a complete list of cadre members in designated camps, photographs and address would be submitted along with list of weapons possessed. The weapons were possessed for self defence. The cease fire was extended for six months and subsequently for another year. The list was provided and the weapons are kept in joint custody.

51. The witness deposed that both HNLC and ANVC are not illegal organisations., ANVC is not involved with ULFA and other smaller froups like ANLF, LAEF. The witness deposed that these smaller groups are involved in killing extortion, kidnapping, serving demand notes, etc., in Garo Hills. He further deposed that none of its top leaders reside in Bangladesh, and they are not carrying on illegal activities. In fact ANVC carries out large number of social activities like voluntarily contributing to the Tsunami relief fund it has even donated 2 ambulances to the villagers.

52. The witness deposed, in his cross-examination, that the Garos deserve a separate state because they have been discriminated against in comparison to other tribes in Meghalaya. ANVC submitted a list of 202 members of its Cadre to the Central Government and the State of Government. The Cadre are maintained through the assistance of well-wishers and the Garo people who wish to have a separate State of Garoland. The ANVC does not have a separate source of income; it is supported by contributions of people/well-wishers on regular basis. The witness denied that ANVC used to maintain large number of weapons and the weapons possessed by them are kept in joint custody. The weapons were maintained for self defence and all of them were obtained from smugglers; RW-4 denied that the weapons were obtained from Bangladesh or were snatched from the Police, Paramilitary or the Army. The witnessess agreed that a list of weapons were given to the State Government which included a list of weapons including LMG's, 5 AK-56 Rifle, M-155, 56MM Rifle; he stated that all these were used for self-defence. The witness deposed that the list of cadres furnished was according to the designated assigned to them. He denied that the variance in the list was due to ongoing recruitment of the cadres but stated that this was due to the progress achieved through to peace talks. The witness stated that he was not aware of the number of cadres in each camp. The witness was again cross-examined after three days, when he deposed that he was not aware of the discharged members or the deserters of ANVC. He further stated that there is no weapon-instructor, and all the cadres are self-trained. He stated that the top leaders of the association live in Garo Hills and the non-tribals are supporting ANVC morally. The witness deposed that ANVC does not publish any literature.

53. The witness further deposed in his Cross-Examination conducted by the Additional Solicitor General that no elections were held to choose the General Secretary and he was chosen by their leader Mr. Dilash M. Marak. He stated that he was never invited to join the organization but he volunteered to do so. The witness deposed that ANVC has its office at Tura Youth Hostel, and the house was allotted by the Government. The witness deposed that ANVC does not have any Written Constitution, its aims and objectives are decided through collective decisions. The decisions are taken in meetings. The witness further deposed the specific number of membership of ANVC is 202. He deposed that the Memorandum submitted to the Central Government displayed a tricolour alongwith the symbol of ANVC which is the flag of the organization. There is only one flag and it is not displayed in public, it is kept in the office. The witness deposed that ANVC keeps changing its head quarter (Cheram as it is called) because of police encounters that has taken many lives of its cadres. The witness deposed that other than the cadre members no one is aware of ANVC headquarters. He further stated that ANVC has a Chairman, a Joint Secretary who looks after the Finance Department. The Commander-in-Chief looks after the cadre. Mr Arist Sengsrang who looks after the publicity of ANVC and he is the Publicity Secretary there is also an Organizing Secretary but there are no defence and foreign Secretaries.

54. The witness deposed that the aims and objectives were not published as it was already in the memorandum. He said that creation of Garoland was not through any means but through political dialogue. The arms and ammunitions were necessary for self-defence. He also stated that two designated Camps were established for ANVC and one liaison office has been established and there is no training imparted to Cadres in designated Camps; due to the political dialogue, that is unnecessary. The witness deposed that ANVC does not hold any public meetings and the activities of its members are known to its Cadres. He further deposed that ANVC has a table calender, which is designed by the Publicity Secretary. He also states that ANVC does not have a bank account as it does not have any money. The money is obtained from well-wishers. He lastly deposed that the average age of ANVC Cadre members is below 30 years due to the fact that young people are physically more active and capable of fighting.

55. Mr Torik Jangning Marak, Organising Secretary of ANVC deposed as RW-5. He tendered his affidavit dated 13th April, 2007 as Ex. RW-5/1. The witness deposed that the aims and objectives of ANVC are creation of a separate state of 'Garoland'. He state that ANVC never aims at cessation of any part of territory of India. He deposed that ANVC is not involved in any kind of criminal activity and at present it does not possess any weapons. He stated that the extortionists of the coal belt areas are not connected to the ANVC but other agencies that collect money on behalf of the Government. The witness deposed that false allegations relating to ANVC about extortion, harassment, capturing business in Garo Hills, terrorizing and creating fear psychosis amongst the people have been made. He stated that all ANVC cadre members live in designated Camps and their movements outside Camps are strictly regulated. The weapons they possess for self-defence are also in joint custody.

56. The witness deposed that ANVC is the response to an age old deprivation felt by the people of Garo Hills, who are deprived of development and are backward. ANVC is fighting for the cause of the people for having been denied the right status. The Garos are lagging behind in education compared with the other two tribes in Meghalaya. The witness deposed that they gets step-motherly treatment in comparison with the other tribes. The witness deposed in chief examination that in the year 2004 ANVC surrendered its weapons. He stated that ANVC plans to contest elections if the ban is lifted. The meetings of ANVC are held in designated camps and the Youth Hostel. He further deposed that Mahindra Finance approached him to act as a recovery agent to re-possess vehicles of defaulters who do not pay vehicles advances, in Garo Hills.

57. The witness deposed, in his cross examination that the principal objectives of ANVC is achieving separate state of Garoland because the Garo are neglected. He state that ANVC does not have written Constitution. The witness deposed that various designations of ANVC office bearers like the Chairman, Joint Secretary and Publicity Secretary are used. He stated that there is no process of nomination and he was nominated as Organisation Secretary verbally. He further stated that before the cease fire the ANVC cadre used to move around, giving publicity to their organization and since the cease fire there is no such activity. He stated that the Cadre was known as the Army. When the witness was asked about few ANVC members who were involved in several cases, he responded in the negative. The witness was aware about the deserters of ANVC; he stated that three of them deserted from the liaison office as they could not comply with the strict ground rules. He deposed that before the cease fire, weapons training was provided to the cadre members which included training to handle weapons of A.K. series and Pistols.

58. The witness admitted that his Christian name is Bernard Marak was changed to his official name Torik Jangning marak. The witness denied there being a company called Mahindra Finance and he agreed that he was granted anticipatory bail in a complaint registered by Mahindra Finance, Ri-Bhoi District. The witness accepted that CW-12/2 wall calender CW-12/3 and table calender were prepared by ANVC, but explained that the photographs in the calender were taken before the cease fire. He accepted that Mr Dilash M. Marak was Chairman of the ANVC and his name was not mentioned in the list submitted to the Joint Monitoring Group or to the Government, because he did not reside in the Camp. The names were only of those who reside in Camps. The witness deposed that ANVC does not participate in national celebrations, but individual members do so. He deposed that ANVC celebrates the foundation day of the organization, or its raising day. He stated that Khasis and Jaintias live in Garo Hills and employment policies were formulated on the basis of proportion of different communities. The witness stated that other than calender and table dairy no written records except the documents furnished to the Joint Monitoring Group, exist with ANVC.

59. The witness deposed that no records are maintained about the money received by ANVC. There is no record of expenses either. There is no records from where the weapons came and how they were utilised. RW - 5 stated that people come to know about the office bearers and cadres of ANVC by interaction and they consider them as their local guardians. The witness deposed that ANVC cadres are known as their Army and there is no commander-in-chief. He stated that illegal activities like extortion are carried out in Garo Hills by other organizations; even now they continued i.e. after the cease fire. He deposed that the aims and objects of ANVC are decided by the Chairman and there is no invitation to join the organization, people volunteer to join. The affidavit signed to be produced before the Tribunal was with Chairman's permission but it was not shown to him.

Submissions on behalf of the State of Meghalaya and Central Government, in support of confirmation of the notification under Section 3 (1)

60. Mr. Ranjan Mukerjee, learned counsel for the State of Meghalaya, submitted that the notification issued under Section 3(1) of the Act should be confirmed under Section 4(3), having regard to the evidence and materials led before the tribunal, Counsel briefly dealt with the provisions of the Act, and submitted that it was enacted in 1967 after the Constitution was amended, in 1963, enabling the State to impose reasonable restrictions to protect the sovereignty and integrity of India. It was submitted that the Act as originally enacted, defined unlawful activity slightly differently and at times difficulties were experienced in invoking the powers in relation to certain kinds of activities. However, the scope of the Act was broadened after the amendment of 2004 which defined "unlawful association", under Section 2(p) to mean an association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity or of which the members undertake such activity. It was submitted that the expressions "encouraged" and "aid" were intended to broaden the coverage of the Act. Learned counsel contended that unlawful activity was defined in the widest terms by Section 2(o); it includes activities of individuals or associations, including words spoken or written or through representation, disclosing, *inter alia*, support to cession of a part of the territory of the Indian Union, or intention to bring about such cession or secession. The definition by sub-clause(ii) also includes activities by such persons, which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India or also causes or is intended to cause dis-affection against India. Counsel submitted that having regard to the object of the enactment namely placing curbs on the freedom of right of association, of individuals, the expressions "sovereignty" "integrity" and the other qualifying terms have to be given the plain and grammatical meaning. Sovereignty and integrity, it was contended intrinsically are wide terms, even in common parlance. Therefore, impediments which are unlawful and illegitimate, posing threats to such concepts, essential for orderly society, have to be construed having regard to the object of the enactment.

61. Learned counsel next contended that the notification issued on 16th November, 2006, proposing a ban on the two organizations, i.e. HNLC and ANVC, is to be confirmed having regard to the materials placed on record and evidence led by the parties. It is contended that the procedure followed by the Tribunal though adjudicatory is not expected to be strictly like that of a Court. Counsel relied upon Section 5(5) to say that the tribunal has the power to regulate its own procedure, subject to Section 9. Section 9 in turn states that the procedure to be followed by the Tribunal would be that which Court has to adopt in holding an enquiry for investigation of claims. Counsel also relied upon Rule 3(1) of the Unlawful Activities (Prevention) Rules, 1968 and submitted that the Tribunal is not strictly bound by the Indian Evidence Act but has to follow it as far as it is practicable.

62. It was contended that the conspectus of evidence led before the Tribunal showed that the ban had to be imposed against both organizations i.e. HNLC and ANVC. Counsel submitted that it was no doubt true that by an agreement, suspending operations was entered into between the Central Government, ANVC and the State of Meghalaya on 27th March, 2004. One of the cardinal objectives of the agreement which was undoubtedly extended, was to disarm the group and make the movement of the cadres accountable. Counsel relied upon Clause 6 of the agreement to say that the ANVC cadres would not move with an TIS or in uniform. It was submitted that the deposition of witness led before the Tribunal, i.e. CW 10 to CW - 16 showed that there were about at least 16 recorded incidents concerning ANVC cadres, in various Districts of Meghalaya. These implicated the accused of offences such as murder, robbery, kidnapping, extortion and

widespread Arms Act. Counsel contended that copies of the FIRs produced for the post may 2005 period, and the affidavit of Deputy Superintendents of Police of the Districts concerned, particularly, were true copies of certified copies. They were photocopies of the copies and the originals of these documents were available but since cases were still under investigation, they could not be presented to the Tribunal. Counsel contended that the culmulative effect of these documents and the depositions of the witnesses, who were duly cross-examined by counsel for the ANVC, disclosed the following uniform pattern.

- (1) The open movement of ANVC cadres, who had not surrendered all their arms;
- (2) creation of terror by the ANVC cadres through acts of extortion, ransom, kidnapping, intimidation etc.
- (3) repeated acts of intimidation of general public. Counsel highlighted particular instances, by relying on depositions of CW-II and CW-12 where money was collected "toll collections" from Haats and Bazars. Counsel also relied upon imposition of an illegal, so-called tax of Rs.5/- per kilo on sale of dry fish in Tura, spoken to by CW-12; likewise ANVC preventing shopkeepers in Tura from sale of DTH equipment to the residents of Municipal area was also cited.
- (4) Deposition of witnesses showing that ANVC cadres target the business community specifically, making illegal demands by issuing notes and also creation of an atmosphere of terror in the general public, inhibiting them from reporting incidents due to scare or retaliation and also preventing them from participating in National Day celebrations.
- (5) Seizure of weapons which are banned by law;
- (6) Reports of ANVC cadres maintaining links with groups and organizations that are banned, like the ULFA, NSCN (IM) and NDFB. Counsel relied upon the depositions of CW-10, CW-13 and CW-16.
- (7) Deliberate act of ANVC to mislead the Government and Joint Monitoring Group set up pursuant to the ceasefire. According to the agreement, a list of ANVC cadres had to be furnished. However, the ANVC furnished different lists containing different names. It also did not fulfil its obligation to surrender arms and keep them in joint custody but kept them in its Liaison office at Tura.

63. Learned counsel submitted that even though the ojective of suspension of operations agreement was to bring ANVC to the negotiating table, initiate confidence building measures and enabling it to eventually to join the main stream, it continue to function with objective of disrupting the territorial intergrity of the country, for achieving the State of Garoland. Counsel submitted that the protestation about the ANVC, wishing to achieve Garoland through peaceful means is belie by its activities. Contrary to its obligation to lay down arms, its cadres continued to move freely throughout various Districts, intimidate and extort people, particularly the business community move around in camouflage and battle fatigues and also commit serious offences. The number of incidents officially recorded is far less than what actually occurs as there is widespread under reporting, due to fear psychosis amongst the people. Learned counsel contended that each time there is an incident concerning ANVC cadres, it is held out of that the persons concerned are not its members or are deserters over whom it cannot exercise any control. All these point to its persistence with the stand of achieving whatever objectives it professes, through violent means and by force of arms, which was impermissible and amounts to an unlawful activity under Section 2(o) of the Act. As a result, the Tribunal, it was contended, should confirm the ban under Section 4(3).

64. It was next contended by the learned that the evidence led before the Tribunal as regards activities of HNLC showed that between the period of the previous ban i.e. May, 2005 and till date, no less than 12 reported incidents took place. These were spoken about by CWs-1 CW-9. Copies of the FIRs are also part of the record.

64. Learned counsel relied upon depositions of CW-2, CW-3 and CW-5 to say that the HNLC cadres were indulging in repeated and persistent acts of ransacking, kidnapping, murder and also challenge the police and armed forces. Counsel relied upon the deposition of CW-6 to state that in firing incidents the HNLC cadres had died. He relied upon the deposition of CW-3 to say that there were several incidents concerning HNLC issuing extortion notes. It also indulged in higher scale acts of violent crimes such as bank robbery etc.

65. Learned counsel contended that the activities of HNLC are aimed towards its objective of seceding from the Union of India and also challenge its sovereignty and integrity. It was submitted that the witnesses for the State have spoken about bandhs on National Days such as Republic Days and Independence Day declared by the HNLC and its targeting businessmen for collection of funds, through threats. Reliance was also placed upon deposition of a witness i.e CW-2 to say that HNLC Cadres were using sophisticated and banned weapons such as 10 AK-47 weapons for which live ammunitions were recovered,. Similarly, other banned weapons like Chinese made pistol etc. were spoken to by that witnesses as well as CW-4. Counsel contended that HNLC had links with banned organizations such as NSCN and NDFB. He relied upon depositions of CW-1, CW-2 and CW-8. CW-8 it was submitted had also spoken about KNV (Karvi National Volunteers) and other banned organizations.

66. Learned counsel contended that having regard to the violent activities of the HNLC, aimed at achieving the objective of ceding disrupting and threatening the sovereignty and integrity of India, in view of the fact that it did not approach the Tribunal in spite of wide publicity about the hearings, or choose to file its objections or place the materials placed on record, the Tribunal should return a finding recommending the ban, on the strength of the materials and evidence placed before it.

67. The Additional Solicitor General of India Mr.P.P. Malhotra and Mr. Sanjay Katyal, learned counsel for the Union of India argued that the Notification dated 16th November, 2006, so far as they concern both the proposal of ANVC and HNLC ought to be confirmed. It was submitted that ANVC and its cadres, have been shown to indulge in acts of intimidation, extortion, leading to collection of funds for their organization, maintaining links with other insurgent groups for carrying out acts of extortion and also maintaining relations with groups in outside the country for the purposes of training of their cadres. Counsel contended that according to intelligence estimates the total weaponry of the outfit was about 150 including 50 AK-series rifles and other banned weapons. Counsel contended that headquarters of ANVC is at "Cheram" which is not a known place, but a secret hideout. It was submitted that the evidence placed before the Tribunal showed that though witnesses avoided mention of a written Constitution, there was no denial that a Constitution with objects of the ANVC existed and that it had a group or band of people, given designations as if they were an armed force. It was submitted that the evidence led before the Tribunal also point to the cadres of ANVC moving around in camouflage and battle uniform. Counsel relied upon the calendar published by the ANVC and the colours admitted by it, the Memorandum submitted to the Government of India.

68. Learned counsel contended that apart from the deposition of the State, the Union had through the evidence of CW-17 spoken about activities of ANVC not being confined to three Districts in Garo Hills but also in West Khasi Hills. Counsel submitted that CW-17 had also deposed that ANVC had links with banned organizations and that in 2005-2006 ANVC cadres were involved in not less than seven violent incidents, two of which involved attacks. Counsel relied upon an incidents of 28th June, 2005, whereby discharged ANVC cadres had attacked the police with hand grenades and were killed in the encounter. He is also relied upon the incident of 4th November, 2005 where an encounter involving ANVC cadres leading to death of two and another incident of 7th November, 2005 . Learned counsel further relied upon the incident of 15th November, 2005 when the police apprehended ANVC cadres in Nongroundu Village and recovered banned weapons as also encounter and killing of ANVC cadre. Lastly, reliance was placed on evidence about an incident of 9th February, 2006 at Dobu, P.S. Williamnagar where 30 persons had attacked some members of the public which ultimately led to the death of one of them and looting of Rs. 7 lakhs and burning of the place.

69. Learned counsel relied upon the testimony in cross-examination of RW-4, General Secretary of ANVC, who admitted that the organization got weapons including light machine guns from smugglers. It was submitted that if the real intention of the ANVC is to participate in legitimate political activity, there is no impediment to full disclosure of all its members, and about revealing location of its headquarters or location of its leadership. Its intentions on the contrary were suspect as ANVC always gave wrong information the - list of its cadres were never correct and they always varied. Counsel also contended that the materials on record showed that all weapons were never disclosed or kept in joint custody but continued with ANVC and were used by its cadres. The ANVC was unable to furnish details of its cadres or even control them which pointed to its anarchic nature or its deliberate attempt to mislead the public agencies and continue with its

unlawful activities. The calendars and the images on it and the Constitution, a copy of which was produced by the witness CW-17 and copy of its army formation, produced by CW-12, as CW-12/3 point to the ANVC's maintaining a parallel administrative and military set up, that cannot be consistent with its preferred goal of achieving Garoland through peaceful means.

70. Counsel contended that if indeed the ANVC is intends to achieve Garoland or statehood through lawful means, there is no need to have a military like set up with leaders called the Commander-in-Chief and the designation of various personnel with military titles. These coupled with the recovery of arms spoken to belie its assertions about its peaceful intentions.

71. Learned counsel contended that the ANVC's consistent reliance on the Joint Monitoring Group Meetings and the so-called non-disclosure of any material about its cadres', misconduct, is of no avail because the FIRs and other documents are matter of public record. Moreover, it is a fact that the suspension agreement was considered and yet the association was declared unlawful, previously. Therefore, the material which has to be considered by this Tribunal is what existed after May, 2005. These show conflicting versions about the ANVC's cadres, about its broken promises (to ensure that cadres are kept in Camps) and its repeated default in surrendering all the arms—it continued to keep them its Liaison Office, under its control. No democratic organization or association intending to have legitimate or lawful political activity can afford to have secret and shifting headquarters, clandestine meetings and un-known location of its leaders. The evidence, it was submitted clearly showed that ANVC has possession of large quantities of arms and also has amassed wealth - yet no bank accounts were opened; nor it was a registered organization. On the face of these irrefutable materials, the only conclusion that can and should be drawn by the Tribunal is that though professing to be formed for a peaceful purpose, ANVC in reality wants to achieve the objective of Garoland, through armed struggle and use of arms and therefore, it is a direct threat to the territorial integrity of India.

72. Learned counsel contended that the judgement of the Supreme Court in *Jamait-E-Islamia Hind Vs Union of India 1995(1) SCC* had declared that the Tribunal has to follow a fair procedure which would mean that the minimum requirements of natural justice should be followed. It was contended that according to the Court, the materials in such matters are subject to the assessment of the tribunal are not confined to legal evidence in the strict sense and that scrutiny is not that of trial. Therefore, the Tribunal has to form an opinion on the points in controversy, by assessing for itself, the credibility of materials presented to it and even if at times such materials are not disclosed to the association. In this context he submitted that the evidence led before the Tribunal though in the form of affidavits and under oath, as well as the copies of the FIRs for the purposes of proceedings are sufficient material. He also sought to place reliance upon the intelligence report disclosed to the Tribunal, in confidence under Rule 3(1) on 9th May, 2007.

73. Counsel supported the submission on behalf of the State Government of Meghalaya and stated that the provisions of the Act have to be construed in their natural and plain meaning, giving wide amplitude to the expression "sovereignty" and "integrity".

74. Learned Counsel supported and adopted the submission on behalf of the State of Meghalaya so far as the ban on HNLC was concerned. It was contended that the deposition of CW-17, in addition, showed that top leaders of HNLC live in Bangladesh and also control camps including training camps. The HNLC indulges in extortion from business men and people in general. He submitted that according to the evidence, HNLC intimidates people and prevents them from taking part in elections such as filing nominations for polls to the Shillong Municipal Board, and issues secessionist statements, such as the one on 25th May, 2006, indicating that it did not intend no intention to stop its armed struggle as long as the Government and the police continued to arrest its members. Counsel relied upon names and office bearers of HNLC, marked as Annexure to CW-17/1. It was submitted that HNLC maintains links with other banned organizations and has openly declared the objective of cessation of Meghalaya from India and is using violence and arms to achieve its purposes.

Submissions on behalf of ANVC

75. Mr. Amit Kumar, Learned Counsel for the ANVC first submitted that the Act has to be construed strictly, as it deals with crimes of an aggravated nature that were not preceived to be controlled by the normal or the ordinary criminal law. He submitted that in as much the enactment imposes restrictions and also creates related offences, the meaning of the expression, or extended to cover situations that do not obviously

fall within the terms. He relied upon the judgements of the Supreme Court reported as *Niranjan Singh Karam Singh Punjabi V/s. State of Maharashtra*, 1990(4) SCC 76 and *Vijay Kumar Aggarwala V/s. State of Orissa*, (1996) 5 SCC 1 to say that the Act cannot be enlarge to cover alledged activities such as extortion and so on which can be sufficiently dealt with through the normal law of the land such as the Arms Act and the Indian Penal Code. The Act cannot also, it was contended, be invoked the remedy general problems associated with law and order.

76. It was next contended that having regard to the statutory scheme i.e. Section 3(1), the Notification dated 16th November, 2006, as far as it purported to impose the ban on ANVC has no lawful effect and could not be acted upon. Learned counsel contended that the opinion of the Central Government has to be that an association is or has become an unlawful association. An unlawful association under Section 2(p) means any association which has for its object done any unlawful activity or which for its object has done any activity punishable under Sections 153-A or 153 B, IPC. Unlawful activity is defined by Section 2(o). Learned Counsel contended that the tenor of arguments on behalf of the State and Union of India indicated that Section 2(o) (ii) and (ii) were sought to be invoked for the purpose of saying that ANVC is unlawful and carrying on unlawful activity. He contended that the notification nowhere stated that activities of ANVC disrupt sovereignty or territorial intergrity of India or that it causes any dis-affection among sections of the people. In these circumstances, in the absence of a textual disclosure, or formation of opinion about the alleged unlawful activity of ANVC, the proposed ban cannot be confirmed.

77. Learned counsel urged that the Central or State Government could not rely on any new or further ground in support of a flawed opinion shown on the face of the Notification. It was submitted that the basis of opinion about the unlawful nature of activities of ANVC and the conclusion drawn i.e. its being "detrimental", bind the Government which cannot thereafter seek to improve on that opinion by adducing fresh materials or affidavits. He relied on the proposition that a statutory order should be judged on the basis of what is disclosed on its face and it cannot be explained through further affidavits or pleadings and cited the decision in *Mohinder Singh Gill V/s. The Chief Election Commisionner*, 1978(1) SCC 405. Learned Counsel further submitted that the Act cannot be used as preventive detention legislation. This was in the context of the statement contained in the Notification that—

"If these activities are not immediately curbed and controlled, the ANVC would re-group and re-armed themselves, expand their cadres, procure sophisticated weapons, caused heavy loss of life of civillians and security force and accelerate their anti-national activities."

It was submitted that this statement showed clearly that according to the Central Government there really was no unlawful activity but it formed the opinion to use the Act, as a preventive measure. He relied upon observations in *State of Madras V/s V.G. Row*, AIR 1952 SC 196 and *Jamat-e-Islami Hind V/s Union of India*, 1995 (1) SCC 428. He also relied on *Mohd. Zafar V/s Union of India*, 1994 (Supp. 2) SCC 1 and stated that the Government cannot rely upon stale material to form an opinion that the association or organization was involved in unlawful activity.

78. Learned counsel further relied upon the notification and submitted that an overall reading and in the context of the previous submissions, the Tribunal has to return a finding that even according to the Central Government the object of ANVC was to hold talks and enter into a peaceful dialogue to abjure violence with the view of ultimately joining the political mainstream. He relied upon the recitation in the notification that ANVC agreed to abjure violence. This, it was submitted, disclosed non-application of mind to the facts since the Central Government clubbed the ANVC with the HNLC. The latter expressly and avowedly wanted to secede from the territory of India. It was submitted that this clubbing has acted to detriment of ANVC as stale and old actions were made part of the opinion formation.

79. Learned counsel next urged that the affidavits and depositions of CW-1 and CW-17 are based on the records and not on personal knowledge. The authors of the documents or those who recorded the FIRs were not produced as witnesses. Further, the original documents were not produced for consideration. These, it was submitted, were fatal to the official case as primary evidence about the alleged activities were not produced, before the tribunal. He relied upon Section 64 and 65 of the Indian Evidence Act and also the judgement reported as *J. Yasodha V/s Smt K. Shobha Rani*, 2007(6) SCALE 6. The material produced in

the enquiry at is, best hearsay evidence without disclosing the source and is not legal material which can be used or acted upon for the purpose of recommending a ban. It was submitted that Rule 3(1), mandated that the Tribunal should, as far as practicable, follow the Indian Evidence Act and that a departure should be made only if public interest so require it. It was submitted that opinion of the victims or authors of the documents or the FIRs produced before the Tribunal or even in Camera proceedings for testing the veracity of the claims, (the onus which lies primarily on the Government of satisfying through legally sustainable evidence about ANVC indulging in an unlawful activities) has not been produced or resorted to. Therefore, the Tribunal ought not to confirm the ban but ought to cancel the notification.

80. Learned counsel relied upon the evidence led on behalf of the ANVC i.e. deposition of RW-1 and submitted that ANVC is not indulging in any illegal or violent activity or that it did not threaten or demand money from anyone. It was contended that the witness, who had no concern with ANVC, stated that Garo people were not having a fair share of development. This witness, was independent of any affiliation with the ANVC. Likewise, counsel relied upon deposition of RW-2, leader of the Labour Union, as well as evidence of RW-3, the President of the Traders Union which comprised of 50% non-tribal members.

81. Learned counsel also contended that RW-4, the General Secretary had in his deposition categorically affirmed that ANVC seeks statehood by peaceful means and that it has not indulged in extortion or illegal activity. It was contended that the witness had brought out the fact that till July 2007, the Government and central forces had suspended their activities, pursuant to a cease fire agreement. Learned counsel relied upon the portions of cross-examination of the witness to say that the suggestion that weapons were being kept have been denied. He also submitted that the desire of ANVC to join political mainstream has to be underscored by its submission of a memorandum as far back in 1999 to the Prime Minister. He also relied upon the deposition of RW-5 to say that this witness graphically brought out how the Garo people were deprived and felt justifiably neglected. In these circumstances, ANVC took up their cause and espoused the concept of a separate Garoland but within the framework of the Constitution of India.

82. Learned counsel next contended that although the State and the Central Government placed reliance on official witnesses and filed copies of certain documents, the depositions of these witnesses are unreliable because they have no primary knowledge of the so-called incidents. Counsel contended that the witnesses on being confronted with the materials by way of Minutes of Meeting of the Joint Monitoring Group, admitted that arms were surrendered and ANVC cadres lived in the three designated camps. If, in fact the State and the Central Authorities felt that ANVC or its cadres were indulging in subversive or unlawful activities, that would have been clearly mentioned or recorded in such Minutes of Meetings. In absence of such mention, the inescapable conclusion is that the cease fire agreement and its terms were accepted and followed, to the mutual satisfaction of all the parties. This inference was essential and important for the ANVC because the Union Government as well as the State were unable to show any specific incident through legally acceptable evidence that the ANVC had gone back from its commitment to abjure violence.

83. Counsel contended that the so-called recoveries spoken of were not supported by any other material and that incidents of violence mentioned during the course of evidence were of stale and in any case prior to 20th July, 2004. Learned counsel submitted that in any case some stray incidents involving deserters of ANVC or those cadres who had been discharged from its camps could not be treated as authorized by it. Such individual acts contrary to the intent and the spirit of the agreement, were done at their volition for which ANVC could not be responsible. Counsel further submitted that the so-called fear psychosis and threat mentioned is absolutely baseless. Nothing prevented the State or Central Authorities from adducing independent evidence of even one witness to support the claim of ANVC or its cadres indulging in unlawful activities within the meaning of the Act.

Analysis of Legal issues

84. The following legal questions arise for determination, before the Tribunal can proceed to consider the correctness of the notification and return its findings either confirming the notification or cancelling it :

- (1) Nature of proceedings before the tribunal and the procedure to be followed;
- (2) Whether strict rules of evidence are to be followed;
- (3) Whether the notification *ex-facie* cannot be acted upon.

Re Point No. 1 :

85. The Supreme Court elaborately dealt with the scheme of the Act, its objectives, and the nature of the procedure to be followed, in *Jamaat-e-Islami Hind-Vs. Union of India* 1995 (1) /SCC 428. the court felt that the exercise of fact sifting or “adjudication” was qualitatively different from assessment in the case of preventive detention; that the high value placed on the right to freedom of association, and the insistence of sitting Judge of High Court, having to man it indicate that these were conditions for authorised infractions into the fundamental right. The court stated that the Tribunal, while undertaking its task, has to follow a procedure that would enable testing the veracity and credibility of conflicting claims. It was held as follows:

“The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the ipse dixit of the Central Government. The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material, on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association.”

The Court later discussed the fact gathering and sifting process which can be performed by the Tribunal, under the Act, having regard to the public interest in ensuring fairness (and transparency) on the one hand, and the other public interest in confidentiality, on the other.

86. Section 4(3), enables the Tribunal to “decide” whether to confirm a ban, or cancel it. This is of course, after following the mandate of issuing a show cause notice to the associations concerned as to why the association should not be declared unlawful. Notices returnable on 12th February, 2007 were issued; they were served at the address known to the Central Government, and also published in the newspapers having wide circulation in the area, both in English as well as in Garo and Khasi language. Additionally, notice by way of information was broadcast in the All India Radio. Pursuant to the notice, ANVC appeared, and contested the legality of the notification; the HNLC chose not to appear in the proceedings; though it was also served, in the same manner as the ANVC.

87. According to the Supreme Court, the process of “decision” making amounts to adjudication. The Act contains certain provisions providing a clue as to what should be the content of the adjudicatory process. The Section 9 no doubt outlines the procedure for disposal of applications; but significantly, it enacts, *inter alia*, that

“the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) Section 4 or by a court of a District Judge in disposing of any application under sub-section (4) of Section 7 or sub-section (8) of Section 8 shall, so far as may be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), for investigation of claims and the decision of the Tribunal or the Court of District Judge, as the case may be shall be final.”

(emphasis supplied)

“Code” has been defined as “Code of Criminal Procedure, 1973 (2 of 1974)” by Section 2(c). Section 9 which talks of the procedure, is subject to rules. Rule 3(1) of the Rules, framed in 1968 prescribes that the Indian Evidence Act, 1872, “as far as practicable” shall be followed. An inquiry, as for instance, under Section 202 of the Code, is not a “trial”. That stage arises only after the court considers the evidence of the prosecution or the complainant, and issues process. Even though the accused might participate in the proceedings, he would be doing so as a member of the public, not as an accused. (Ref. *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonkar* (AIR 1960 SC 1113: 1960 Cri LJ 1499), *Chandra Deo Singh Vs. Prokash Chandra Bose* (AIR 1963 SC 1430: 1963 (2) Cri LJ 397); *S.S. Khanna Vs. Chief Secretary, Patna* AIR 1983 SC 595; *Jarnail Singh Vs. State of Haryana* 2003 (109) Cr. LJ 2307 (SC)). Therefore, inherently, the proceedings are not in the nature of a trial, and even the court only inquires broadly whether the complainant has made out a case for issuance of process, on a *prima facie* basis [Ref. *Kewal Krishan Vs. Suraj Bhan* 1980 (86) Cr. LJ 1271 (SC)].

88. The net result of the above analysis is that the Tribunal's role, under Section 4(2) is adjudicatory; this delineates its task as radically different from the work of Advisory Boards set up under preventive detention laws. The adjudicatory role necessarily affords greater intrusion into the evidence, materials and decision making process that goes into formation of opinion of whether an association has to be declared as unlawful. Further, the decision in Jamaat had emphasized that the tribunal's procedure should be fair and one may add, reasonable- because its task comprehends likelihood of restricting the fundamental right to association, though for a limited period. However, this adjudicatory process is not a trial; its procedure is to be like an inquiry, aimed at gathering materials needed to form conclusions. Likewise, the argument that the provisions of the Act have to be construed strictly, are unacceptable, because the statute does not involve penal consequences; if it were so, the procedure, nature of trial and standards would have been as in the criminal case of a trial.

Re Point No. 2

89. This question too was addressed and dealt with by the Supreme Court in the Jamaat decision. The court, after considering Sections 4, 9 and the Rules, held that :

"22. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof is likely to be against the public interest. The scheme of the Act and the procedure of inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office-bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test and the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government."

(emphasis supplied)

Section 5(5) enables the Tribunal to regulate its own procedure; Section 5(6) enables it to use powers vested in a civil court, under the Code of Civil Procedure, for the purpose of summoning and attendance of witness, discovery and production of evidence; reception of evidence through affidavits; requisitioning of public record from any court or office and issuance of commission for examination of witnesses. Section 9(3) is titled, perhaps misleadingly as "Procedure to be followed in the disposal of applications under the Act". As noticed in the previous discussion, the procedure is as enacted in the Code. The section is subject to the rules; Rule 3(1) expressly states that the tribunal's should follow, as far as practicable, provisions of the Indian Evidence Act. The cumulative effect of these provisions, and the discussion in Jamaat and the provisions, of the Act are that the procedure to be followed by the Tribunal should be fair, affording the concerned individual or association a proper opportunity of confronting and meeting the evidence or materials disclosed by the State or Central Government in support of the claim for confirmation of the declaration that the organization should be banned. The tribunal should, wherever possible (as is

evident from the expression “practicable”) follow the provisions of the Indian Evidence Act. However, having regard to the nature of the proceeding (inquiry akin to one under the Code of Criminal Procedure, as juxtaposed to a trial) and likelihood of sensitive nature of material likely to be disclosed during the proceeding before it, the tribunal is not hidebound by rules of evidence; it has to follow them in the spirit, and the principles of Evidence Act.

Re Point No. 3

90. A decision on this point is called for, since the counsel for ANVC took the position that the notification dated 16th November, 2006 is not sustainable, as it nowhere recited anything adversarial to that organization. He also urged that the Central Government could not traverse beyond the grounds or contents of the notification to say that the ANVC was an unlawful organization, and to the extent there is dichotomy between the grounds mentioned expressly and the contents of the affidavits, the latter should not be seen by the tribunal. He also urged that the clubbing of ANVC with HNLC and issuance of a common notification showed non-application of mind, since the grounds could not be common.

91. The first objection raised pertains to absence of any reference to the expressions under Section 2(o) which define unlawful activity, such as any association acting so as to “disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or “which causes or is intended to cause disaffection against India;” in the notification. The counsel urged that the notification had merely recited that Central Government is “of the opinion that the aforesaid activities of the ANVC and the HNLC are detrimental to the sovereignty and integrity of India,”. The submission was that the provision required specific opinion about acts questioning, disrupting, or intention to disrupt the sovereignty and territorial integrity of India, or cause of intended to cause disaffection against India; the notification did not mention any of these, and used “detrimental”.

92. According to the Merriman Webster Online Dictionary (www.mw.com/dictionary/detrimental accessed on 13th May, 2007 at 18 : 41 IST) “detrimental” means “obviously harmful”; damaging; pernicious. The Oxford dictionary (<http://www.askoxford.com/> accessed on 13th May, 2007, at 18 : 44 IST) detrimental means harm or damage. These show that the expression “detrimental” bears the same meaning as harming or causing injury. The expressions used in the Act, defining unlawful activities are “disrupt” the territorial integrity of sovereignty of India. Although the notification in question does not use the same expression, that, in my opinion, has not resulted in a fatal infirmity; the notification expressly recites that the Central Government has formed the opinion that the associations are unlawful, and indulge in unlawful activities. If these, and the aim of the activities, undermining the sovereignty or the territorial integrity are taken into consideration, the conclusion which has to inevitably follow is that the lapse or omission in the use of the expression “disruption” cannot invalidate the notification. Furthermore, the process of adjudication by the tribunal is meant to assure meaningful hearing, and opportunity to the concerned group or association to show that its activities are not unlawful. It is well settled that a mechanical incantation of the statutory conditions by themselves do not imply that the requisite objective facts exist; those are matter of inquiry, as in this case, by the Tribunal.

93. The next question is whether the Central Government can rely on instances that were not mentioned in the grounds published in the notification. Reliance had been placed upon the decision in Mohinder Singh Gill to say that the grounds mentioned in a statutory order cannot be improved upon. No doubt, the proposition that a statutory order has to be tested on the basis of the contents appearing on its face, and no other pleadings or evidence can be seen by the court, is well settled. However, the distinction between the order under the Act, and other statutory orders, is that this order sets into motion the mechanism of a decision making process, through materials and evidence before an impartial tribunal, which has to be satisfied on the basis of what is placed before it; in other cases, orders reflect the opinion or decision of the Government. The notification and process under the Act assimilates an adversarial procedure where the association as well as the Central Government and others interested, are afforded opportunity of hearing and adducing evidence. Therefore, the analogy, and reliance on the proposition that the authority is bound by the declaration or recitals in a statutory order, is inapt in the case of a tribunal under the Act.

94. The third facet raised is that the Central Government issued the notification, as far as ANVC was concerned, without application of mind. The opening recital, which mentions about the assurance of ANVC to abjure violence, has been relied upon. It was urged that this shows that the nature of allegations against both organizations are different, and that there were no grounds to issue the notification as far as ANVC was concerned.

The notification states as follows :

“Whereas the Achik National Volunteer Council (hereinafter referred to as the “ANVC”) of Meghalaya have continued collection of funds and extortion despite having agreed to adjure violence and having expressed their willingness to hold talks within the framework of the Constitution of India for fulfilling their demands.”

It later mentions that about opinion of the Central Government that both ANVC and HNLC have been:

- “(i) indulging in acts of intimidation, extortion and looting of civilian population for collection of funds for their organizations;
- (ii) maintaining links with the other insurgent groups of the North Eastern Region for carrying out acts of extortion and intimidation;
- (iii) maintaining camps in some neighbouring countries for the purpose of sanctuary and training of their cadres.

And whereas the Central Government is also of the opinion that—

- (i) the ANVC was involved in twenty four violent incidents in 2004, six violent incidents in 2005 and one violent incident in 2006 (upto 31st August, 2006),
- (ii) These violent incidents by ANVC resulted in killing of 12 persons (including 4 Security Forces) in 2004 and one person in 2005;

These recitals were later followed by the opinion that ANVC was an unlawful association. Facially, I am of the opinion that the mention of two organizations do not vitiate the notification or opinion formation that ANVC is an unlawful association. The mention of its agreement to abjure violence is only to show that despite assurance, it continued to indulge in acts of extortion, and collection of funds. The tenor of the entire notification shows that the Central Government was conscious about the difference in the nature of the activities of the two associations; it dealt with them separately.

Discussion of Evidence and Findings

95. CW-1 and CW-2 are the Deputy Commissioner and Superintendent of Police of Jaintia Hills District, Jowai. They deposed about continued acts of violence and looting by the HNLC cadres. CW-2 has narrated incidents of 25th January, 2005 and 25th March, 2005, concerning looting and kidnapping. However, in my opinion, those incidents cannot be taken into consideration by this Tribunal because they relate to periods that were considered by an earlier Tribunal, as such they are stale grounds. CW-2 has also spoken of a kidnapping incident dated 25th May, 2005 and lodging of an FIR at Jowai and the kidnapped person being killed. He narrated about arrest of one Bashembha Pathaw on 8th January, 2006 and recovery of 10 Chinese made AK-47 live ammunition and surrender of six HNLC cadres in Jaintia Hills between May and July and between 8th May, 2005 and 16th July, 2006. The cadres also surrendered weapons. CW-2 deposed that both HNLC cadres in Jaintia Hills between May and July and between 8th May, 2005 and 16th July, 2006. The cadres also surrendered weapons CW-2 deposed that both HNLC operates in the District but HNLC is more active and that NSCN(IM) is the main supporter of that organisation.

96. CW-3 and CW-4 are the Deputy Commissioner and Superintendent of Police of East Khasi Hills District. The former mentioned about links between HNLC, ULFA, NDFB, NLFT and NSCN. He stated that the main target of HNLC is business community. CW-4 deposed about several incident in the East Khasi Hills District, including kidnapping, operation for rescue of the victim on 10th July, 2005, lodging of an FIR before Mawsynram Police Station. A copy of the FIR was placed in the file of the Tribunal. It also spoke of recovery

of three rounds of 9mm live ammunition, one hand grenade of Chinese make, DBBL gun etc CW-4 mentioned about HNLC's call for Bandh on 14th August, 2005 and later as well as a demand by it from Pratul Chandra Deka on 22nd September, 2005, arrest of HNLC cadre and filing of PS. Laban Case No. 53 (09) of 2005. He mentioned about other incidents, namely, dated 23rd December, 2005, leading to charge sheet dated 6th July, 2006 where 9 mm pistol with magazine loaded with 7 rounds of ammunition were recovered. He also deposed about a Bandh call in respect of the Republic Day Celebration on 26th January, 2006 and the killing of Aibor Marwein on 26th March, 2006, registration of Police Case No. 16(3)06. A copy of that FIR was shown to the Tribunal and is part of the record. He further mentioned about arrest of Kampher Frankly Syiem on 6th July, 2006 and recovery of incriminating documents, leading to registration of Shillong Sadar Police Station Case No. 128(07) of 2006. The deposition further included statement about boycott of Independence Day on 15th August, 2006 and a demand on 28th September, 2006 for Rs. 10 lakhs from Rahul Jasararia. He spoke about another incident on 20th September, 2006 in the morning and an encounter which took place that day in Umkrem village leading to arrest of two HNLC cadres and the death of another person. He mentioned about activities of HNLC in East Khasi Hills which has a long International Border, Bangladesh where its top leadership is allegedly hide.

97. CW-5 and CW-6 are Deputy Commissioner and Superintendent of Police respectively of West Khasi Hills District Nongstoin. They spoke about both HNLC and ANVC but mainly about HNLC. According to CW-6, the HNLC's activities are aimed at disruption of sovereignty and territorial integrity of India through arm struggle. He stated that its cadres operated in Nongjri, Umbar, Nonghyllam, Ponnawdar and Maweit areas. He also stated that HNLC cadres extort money from the business class and indulge in dacoities, theft and attack on police parties; according to him HNLC has direct links with the NSCN(IM) and NLFT. These banned organisations help HNLC by training the cadres and giving other supports which undermines the security and peaceful life in the State. He spoke about an encounter with HNLC leading to death of its cadres on 22nd June, 2006, at Nonghyllam village, recovery of carbine with six round of live ammunitions, one revolver with five rounds of 32 ammunitions and other incriminating documents. This is subject-matter of PS Case No. 13(6)06. The witness spoke about another incident when raid was conducted on 18th November, 2006, leading to recovery of two demands notes by HNLC signed by its Finance Secretary.

98. CW-7 and CW-8, Deputy Commissioner, Ri-Bhoi and Superintendent of Police, Ri-Bhoi more or less deposed in the same manner. CW-7 spoke of relationship between HNLC and other banned groups such as ULFA, NDFB and KNV. CW-8 produced materials through a list giving specific instances. According to him one Kalenderson Wanniang of the finance wing of HNLC was arrested and a demand note of HNLC signed by its Finance Secretary was recovered. This arrest led to disclosure about distribution of several demand notes to business men and the filling of P.S. Case No. 45(6) 03.

99. CW-9, Commissioner and Secretary to Government of Meghalaya spoke about unlawful, nefarious and anti-national activities of HNLC in the District of East Khasi Hills, West Khasi Hills, Jaintia Hills and Ri-Bhoi of Meghalaya. She stated that the principal object of HNLC is to achieve a separate state that would not be part of India. She deposed that HNLC calls for Bandh and threatens people not to attend national day celebrations. According to her HNLC is active in Khasi and Jaintia Hills since they have a long International Border; it maintains good relations with other banned insurgent groups like NSCN, ULFA, NDFB and NLFT; they train the cadres of HNLC. She submitted that HNLC mainly targets the business community and extorts money from them. She stated detailed recoveries of weapons such as 1 AK Rifles, one 303 Rifle, 2 Shotgun, one Pistol, 1 Revolver, 30 ammunitions, 1 empty magazine, 1 hand grenade were recovered in 2005 and three carbines, 1 pistol, 3 revolvers, 31 ammunitions, 2 empty magazine were recovered in the year 2006. She also filed a copy of the newspaper intimating that the two organisations, namely, ANVC and HNLC were unlawful as proof of publication of the show cause notices.

100. CW-17, Shri R.R. Jha, Director to the Government of India, Ministry of Home Affairs deposed that the HNLC's aim is to liberate the Hynniewtrep people from the so called authorian rule of the Indian government, protect the Khasis and other Meghalaya tribes from exploitation and preserve the indigenous culture. He deposed that HNLC threatens people not to participate in the national day celebration and calls for Bandhs. He spoke about HNLC's involment in unlawful activities like extortions, particularly in the local

sector in Khasi Jaintia areas, extortion from business community, looting civilians to collect funds, intimidation and kidnappings. He too stated that the HNLC has links with banned associations declared as unlawful based at Bangladesh. He deposed that the ban should be extended since the previous ban had to a certain extent helped in curbing the organisation and its activities.

101. The above discloses that for the relevant period, namely, between May/June 2005 and December 2006, the evidence led on behalf of the Union of India through affidavits and the depositions and the stand of the State of Meghalaya (which also supported the Central Government's opinion that HNLC is unlawful), have shown about 12 incidents that led to lodging of FIRs. These incidents concerned allegations related to murder, kidnapping, extortion and seizure of illegal weapons from the cadres/members of HNLC.

102. The depositions of all the witnesses on behalf of State of Meghalaya show that HNLC is active and functions in East and West Khasi Hills Districts, Jaintia Hills District and Ri-Bhoi District. According to the witnesses on behalf of the State of Meghalaya, it also maintains active links with banned organisations such as NSCN, ULFA, NDFB, KNV and NLFT etc. There have been some incidents where HNLC's cadres died in encounter and were arrested, which led to recovery of weapons. The evidence further points to HNLC holding out threats to the people in 2005 and 2006 and preventing them from participating in national celebrations for Republic Day and Independence Day. Additionally, the witnesses deposed that HNLC wants a separate State for Hynniewtrep people outside the territory of India. According to these witnesses, who include the Superintendent of Police of the four Districts, the top leadership of HNLC is based outside the Indian Border, in Bangladesh. HNLC also seeks the help of other associations declared unlawful for training and resource building etc.

103. The Tribunal had issued show cause notice, which was published in the local newspaper at Shillong and all the District Headquarters, returnable on 12th February, 2007. The HNLC did not choose to appear or file its response. Proceedings and public hearings held in Shillong on two separate occasions, namely, 12th April, 2007 to 14th April 2007 and on 6th May, 2007. Wide publicity about the hearings was given in the English language newspapers as well as the local newspapers such as in Garo and Khasi. Copies of those newspaper's publication are part of the record. Despite these HNLC has chosen not to appear and contest the proceedings.

104. The analysis of unrebutted evidence shows that HNLC is an organisation committed to achieving a separate or independent State for the Hynniewtrep people outside India and to that end it seeks to achieve the objective through act of violence. These acts of violence include attacks on police personnel, use of sophisticated and illegal weapons, repeated acts exhorting the people not to attend national day celebrations, preventing people from participating in the democratic process (as in the case of holding out threats against candidates from filing nominations for the elections in the Shillong Municipal Board) etc. The evidence also points to HNLC maintaining contacts and link with four other organisations that have been declared unlawful. Its leadership is in Bangladesh where they have camps to train cadres and where apparently they flee after committing acts of kidnapping, extortion and other acts of violence.

105. Individually the 12 FIRs spanning a period of two years may not seem to be serious. However, what is to be considered is the pattern of activities. A common thread appears to run through all these - the objective appears to be to intimidate people, disrupt normal functioning and undermine economic activity through extortions and kidnapping. The incidents where repeatedly HNLC has held out threats against people to prevent and intimidate them from participating in national day celebrations coupled with the threat held out against people wanting to participate in the democratic process, display its commitment to pursue the path of violence to achieve the end of a separate State through armed struggle and violence. This clearly establishes that its activities do not have any unlawful aim but are meant to undermine and disrupt the sovereignty and territorial integrity of India. In view of the above discussion and after considering all the materials on record, this Tribunal is of the opinion that sufficient materials have been shown (in the inquiry held by it) by the Union of India and the State of Meghalaya to confirm the Notification under Section 3(1).

106. As regards the ANVC, the Central Government has relied upon deposition of Shri R.R. Jha, CW-17 and his affidavit; it is supported by the witnesses on behalf of the State of Meghalaya, primarily, CW-10 to CW-16. CW-10, the Commissioner and Secretary to the Government of Meghalaya, Political Department in her affidavit deposed that she enclosed press clippings of local newspaper intimating in Shillong Times dated 12th December, 2006, 'U Mawphor' of the same date and Satantini Janera dated 13th December, 2006 intimating about the Notification. The publication through newspaper clippings, containing the show cause notice issued by this Tribunal in those newspaper dated 30th December, 2006 and 4th January, 2007 as well as in respect of "The Telegraph" Kolkatta dated 30th December, 2006 have been enclosed. The witness enclosed documents evidencing broadcast of notices in the All India Radio and Doodarshan, Shillong.

107. She deposed that ANVC engages in acts of intimidation and extortion from non-tribal businessmen, particularly in Tura and other towns of Garo Hills. She deposed about leaders of the ANVC forcing Coal Traders to buy forms at highly inflated rates from their agents without lawful authority. This witness mentioned about the Tripartite Settlement of July, 2004, establishment of a Joint Monitoring Group to monitor the ceasefire and setting up of camps. According to her ANVC refused to hand over arms and ammunitions which, were kept in a Liason Office of ANVC at Tura. She mentioned about intelligence reports to say that ANVC continues its links with other organisations in Bangladesh and has established safe havens there. According to her ANVC cadres deserted camps with weapons between May, 2005 and April, 2006. They formed two organisations, Achik National Liberation Front (ANLF) in East and South Garo Hills and Achik National Youth (ANY) in West Khasi Hills. She deposed about arrest of ANVC cadres including deserters and recovery of two AK series rifles and several banned Weapons. A list of ANVC cadres said to have been involved during 2005-2007 with their names and involvement in different police cases has been produced with the affidavit; a common list containing the recoveries of arms and ammunitions has also been filed.

108. Counsel for the ANVC had extensively cross-examined her. The witness deposed that the Government of Meghalaya had no objection to extension of agreement but at the same time denied the suggestion that the Joint Monitoring Group at any stage expressed satisfaction about adherence to ground rules by the ANVC. She maintained that the objective of ANVC is to achieve Statehood through armed struggle. She stated that list of all ANVC members were with the Government but also volunteered to the Tribunal that such a list cannot be considered as exclusive because the ANVC re-groups. The name of the Chairman of ANVC does not find mention in the list. She also mentioned about the differences in the list. She again highlighted, during the cross-examination about the ANVC not surrendering arms and keeping them at a neutral place. According to her extension of ceasefire was not objected to by the State of Meghalaya to facilitate the on-going peace process.

109. CWs-11 and CW-12, Deputy Commissioner West Garo Hills and Superintendent of Police, of the District, supported their depositions on affidavit and deposed that ANVC carried out its unlawful activities in the District and it has links with NSCN, ULFA and NDFB to supply arms and ammunition. According to them the unlawful activities include extortion, killing and intimidation. CW-11 admitted in the cross-examination that some sections of the Garo community have resentment on certain issues of governance which were expressed through bandhs etc. but denied that ANVC has the support of any section of the Garos. He also stated that there were several violation of the ground rules. He agreed, upon being shown Minutes of Monthly Review Meeting on 8th December, 2005 that they did not record violation of terms of the agreement. According to him the objective of the meeting was to bring home the benefits of abjuring violence. He volunteered in his cross examination about the incident which took place on 25th August, 2005 when the Joint Secretary of ANVC along with some cadre members forcibly entered the chambers of the District Magistrate which was reported. He admitted that there were some deserters from ANVC camps. CW-12 submitted his affidavit, which described different incidents, on 15th February, 2006, 17th February, 2005, 5th April, 2006 and 14th April, 2006. He affirmed that these incidents were a few of the many in the district, most of which were unreported due to fear psychosis in the general public. According to CW-12 the objective of ANVC is to achieve Garoland through armed rebellion i.e. indulging in activities like extortion, criminal intimidation, looting, the public and attempts to capture business in Garo Hills. He also deposed that in two areas three ANVC cadre members were arrested. According to him the business community is targeted and that they

have links with banned organizations. He produced CWs-12/2 wall calender, CW-12/3 table calender for 2007 and CW-12/4 copy of document entitled "Army formation of Achik National Volunteer Council" in Garo printed at Chiram Printing Press and its translated copy, CW-12/5.

110. In cross-examination, CW-12 admitted that ANVC leaders were permitted to carry small fire arms but not allowed to wear them in public places. He dinied about threats from other organizations and admitted that according to clause 5 of the agreed terms of ceasefire, ANVC leaders could be provided PSO's from the Meghalaya police. He, however, stated that none of the leaders sought such protection. He also stated that ANVC had not been cooperating with the police and other organizations. He admitted that there were deserters from ANVC camps and denied the suggestion that ANVC did not maintain links with any other banned or unlawful organization. In his cross-examination he stated that ANVC imposed a tax of Rs.5 per kilo on the sale of dry fish in Tura and deposed also that ANVC had imposed a ban on the sale of DHT technology, which affected business in Tura. According to him ANVC controls the cable business operations. He admitted that though he is empowered to register an FIR into such incidents, chances of their success would be bleak since people would be unwilling to depose in support of the allegations on account of fear. He denied that ANVC was being out, to deprive it from participating in mainstream political activities.

111. CW-13 and CW-14 deposed about the South Garo Hills District and tendered their affidavits CW-13/1 and CW-13/2. CW-13 is the Deputy Commissioner, South Garo Hills, Baghmara and CW-14 is the Superintendent of Police, South Garo Hills. According to them one incident being Baghmara Police Station Case No.20(5)/2005 was reported and other incidents were not reported due to fear. Mainly non-tribals are targeted for extortion and in some cases local businessmen are also subjected to extortion. CW-13 stated that shopkeepers in Tura do not sell DTH equipments to residents since ANVC has a monopoly and controls the cable business. In her cross-examination she denied the suggestion that ANVC had not indulged in extortion or related activities and also denied the suggestion that ANVC does not maintain links with banned organizations. In the cross examination she mentioned about the incidents of extortion by ANVC and its cadres from coal traders in Nongal Bibra.

112. CW-14 the Superintendent of Police of South Garo Hills mentioned about the incident dated 2nd May, 2005 where firing by ANVC cadres lead to arrest of some people, recovery of weapons and the lodging of an FIR being Baghmara P.S. Case No. 20(5)/ 2005. According to him ANVC has relationship and links with banned insurgent groups like NSCN, ULFA, NDFB etc. and has its headquarters at Bangladesh. He stated that the previous declaration had helped in curbing the activities of the organization. In his examination-in-chief he stated that apart from members of the business community headman of villages were also threaten by ANVC as also Government officials. He stated that ANVC cadres are concentrated in coal belt area of Nagal Bibra. In cross-examination he expressed lack of knowledge where the previous S.P. of South Garo Hills requested to ANVC to arrest the police about information regarding 6 ANVC deserters. He denied the suggestion that ANVC had not indulged in illegal activities or that it had no links with banned organizations. He stated in the cross-examination that ANVC was not supposed to carry arms as per the ground rules yet discoveries of arms were made.

113. CWs-15 and 16 the Superintendent of Police East Garo Hills, and Deputy Commissioner, East Garo Hills Williamnagar deposed and tendered their affidavits as CW-15/1 and CW-16/1. CW-15 deposed and tendered copies of the FIRs. They relate to several incidents, invloving kidnapping, and murder. CW-15 mentioned that ANVC cadres forcefully controlled many district councils gates in three districts of Garo Hills and in order to gain sympathy it purchased ambulances and vehicles etc. and donated them to the people. He mentioned that seizure of one such vehicle later reaveled that it was used by ANVC cadres for carrying on illegal activities. He mentioned about the incident of 8th August, 2006 where ANVC cadres were nabbed by any personnel at Dabas and 9 mm pistol with of live ammunitions were seized. According to him ANVC cadres also indulged in felling of trees from preserved forest and there is under reporting of the activities due to scare among the people. The main supporters of banned organizations in East Garo Hills include ULFA, NDFB, NSCN etc. According to CW-15 the basic objective of ANVC is to achieve separate sovereign State through armed struggle and the ANVC cadres carry banned weapons; they also prohibit

celebrations and observance of National Festivals, Independence and Republic Day. He admitted that three designated camps of ANVC cadres are supposed to reside and one of them is located in his District. He however stated that in spite of that condition many cadre members never actually stayed in the camp. He did not deny that in some previous cases there were deserters from the camps.

114. CW-16 deposed that ANVC is actively involved in unlawful activities in East Garo Hills and that its top linking leaders are in hiding. Its cadres raise funds by extortion. The witness deposed that ANVC has links with banned organizations such as ULFA, NSCN(IM) and NDFB. According to him the declaration of its being unlawful had helped earlier to curb its activities. In the cross-examination he stated that the last time ANVC called for bandh on Independence Day and Republic Day celebrations were in 2004.

115. CW-17 tendered two affidavits CW-17/2 and CW-17/3, he is the Director to Government of India, Ministry of Home Affairs. According to him the ANVCs objective is creation of a separate State of Garoland and that it was formed on 24th September, 1996. Its headquarters is at Chiram, an unknown place. Its Constitution refers to existence of Cabinet, Commander-in-Chief, Army Staff, Army Department, passing of bill by the Cabinet, all of which indicate that it does not function within the framework of the Indian Constitution. Its Constitution also requires physical health check of the prospective members, by the intelligence and investigation unit of the organization and also that the members are prohibited to disclose the plan and secrecy of the party. The objective of ANVC is creation of a separate State of Garoland comprising of three Garo Hills Districts of Meghalaya and contiguous areas inhabiting of Garo's, West Garo Hills and Ri-Bhoi Districts of Meghalaya as well as Goalpara and Kamrup Districts of Assam, which has led to resentment in those areas. The demand has prompted enmity between Khasi's as well as Garos and other people. According to the witness the demand attempts to create disharmony and spread of hatred and ill-will. He stated that the activities of ANVC has led to ill-will between different people.

116. CW-17 also stated that to achieve its objective, ANVC intimidates State functionaries and the public, raises funds through extortion, kidnappings, robberies, indulges in establishment of bases in remote areas and also maintaining links with other underground outfits or banned organizations. In his affidavit CW-17 enclosed three statements detailing incidents of violence by ANVC in 2004-2005 and 2006. CW-17 stated that ANVC had entered into an agreement for suspension of operation with Government of India and Government of Meghalaya on 23rd July, 2004, initially for six months. It was extended periodically and is now valid upto 23rd July, 2007. The ANVC agreed to abjure violence and expressed willingness to talk within the framework of the Constitution. A Joint Monitoring Group comprising representatives of Army, paramilitary forces, Government of Meghalaya and Central Government is monitoring the ceasefire. The witness stated that further to the ground rules ANVC cadres were accommodated at Jetrage Chokpot Camp in South Garo Hills, District and Samanda Camp in East Garo Hills District of Meghalaya and a liaison office was established at Tura. A list of 202 cadre members were submitted by ANVC to Government of Meghalaya but only 120 cadres stayed in the designated camps. The list provided does not contain names of important persons like the Chairman, Dilash Marak Jerome C. Momin (Self Styled Commander-in-Chief) who are not staying there.

117. CW-17 stated that the ANVC deposited only 16 weapons and that many other weapons continue in their possession which posed a threat to law and order. He stated that cadres of ANVC have been deserting the camps and indulging in undesirable activities. Some such deserted cadres, under the leadership of Nobin K. Marak floated Achik National Liberation Front (ANLF) and indulged in criminal activities. CW-17 stated that according to reports even after staying in the camps the cadres indulge in large scale extortions, collecting "donations" from coal traders and other target groups. He mentioned about incidents of 30th May, 2005, 7th October, 2005 and 5th April, 2006 where specifically named persons deserted the camps with arms like 3 AK-47 rifles, magazines and three Chinese handgrenades, two self-loading rifles etc. He stated that the incidents point to ANVC not having control over its cadres and being an anarchic organization. The witness stated that even after suspension of operations ANVC is active in Garo Hills and engages in activities aimed at acquiring and enhancing financial capabilities and acquiring legitimacy; its cadres continued to carry

illegal arms and ammunitions in sizeable quantities and are in various hideouts. ANVC according to CW-17 acquired rights for weekly haats and taxes businessmen in Tura for their transactions. They terrorize people who are scared to report against them.

118. CW-17/3, the encloses a copy of the ANVC Constitution drafted on 26th June, 1996. The witness was mainly cross-examined regarding violation of ground rules and whether they were reported. He was confronted with the Minutes of the Joint Monitoring Group Meeting of 17th January, 2005 and asked whether the Central Government took any action. In reply he stated that the State Government took action not only in respect of such incidents but also others. In cross-examination he stated that in the meeting of 11th July, 2006 ANVC was asked to furnish a complete list of its cadres. A list of 202 cadres was provided in August, 2006. Out of these only 120 stayed in the camps. He also stated in the cross-examination that only a list of 16 weapons was provided further to the understanding.

119. The evidence led on behalf of ANVC were depositions of five witnesses. RW-1 is a functionary of the Achik Peace Foundation; he supported the ANVC and stated that the organization never threatened anyone or demanded money through extortion. According to him an incident took place on 30th September, 2005 after which various denominations of Chru groups became active in promoting peace. RW-2 a trade Union leader supported his affidavit RW-2/1 and claimed that he has close relations with non-tribals who were in substantial numbers, and were members of the Union. According to him ANVC never indulged in threats or intimidation; it promotes interests of the Garo people with a view to support Statehood. In the cross-examination he stated that there are a thousand members of the Union and for subscription, a Registration Fee is Rs. 100 each is charged from new members. He stated that majority of the members of the Union are non-tribals and there is any threat by ANVC to them, it is forwarded to the Union. He maintained that ANVC's involvement resulted in reduction of incidents in looting, gambling and drinking. He expressed lack of knowledge about activities of ANVC. He also stated that cadre members of ANVC visit the region where he resides and they do not carry any weapons. He is also not aware about the source of funds of ANVC.

120. RW-3 tendered his affidavit as RW-3/1. He claimed to be President of the Garo Hills Traders Union formed with the objective to promoting and safeguarding the interests of the region. He mentioned about the activities of the Union, comprising of about 1000 members of whom about 50% are non-Garos. He expressed lack of awareness about ANVC's lodging any objection to the notification proposing that it should be declared as unlawful. He also deposed that he was never made aware of any member of the Association being asked to pay any money to ANVC or any threat or harassment to any traders.

121. RW-4 tendered his affidavit dated 13th April, 2007 as RW-4/1. He is the General Secretary of ANVC since 1998. According to him the objective of ANVC is a creation of separate Garoland to shape their destiny. He deposed about agreement of suspension of operations and about meetings held on separate occasions. He specifically deposed about a meeting on 17th January, 2005 where ANVC qualified that its cadres were not indulging in unlawful activities and that police should take action against those using ANVC's name in extortions. He deposed that ANVC was not recruiting any new cadres. He stated that a complete list of cadre members in designated camps with photographs, address etc. was to be submitted in accordance with the decision on 18th July, 2005. He also stated that the weapons possessed by ANVC cadres were for self-defence. He claimed that ANVC is not an illegal organization and is also not involved with ULFA, or other similar groups. He claimed that other similar groups such as Achik National Liberation Front are involved in extortion, kidnapping etc. He asserted that none of ANVC's top leaders reside in Bangladesh and they are not carrying out any illegal activities. He stated that ANVC carried out any large substantial social activities like Tsunami Relief Fund from contributions made by its members voluntarily and it also donated two ambulances to villagers.

122. In the cross-examination RW-4 deposed that Garos deserve a separate State due to discrimination against them. He stated that ANVC submitted a list of 202 members of its cadres which are maintained by well-wishers and the Garo people. ANVC does not have separate source of income but is supported by the

contributions of the people on regular basis. According to RW-4 ANVC does not maintain large number of weapons but those possessed by it were kept in joint custody. The weapons were needed for self-defence and all of them were obtained from smugglers. He denied that the weapons were obtained from Bangladesh or snatched from police, paramilitary and armed forces. He admitted that the list of weapons given to the State Government included five LMGs, AK-56 rifles and 155.56 MM rifle etc. He clarified that all these were used for self-defence. He expressed lack of knowledge about the number of cadres in each camp and stated that list of cadres were furnished according to the designations used by the ANVC. He denied that suggestion that ANVC was recruiting cadres continuously and stated that the difference in the list of members was due to progress achieved in the peace talks. He stated that ANVC does not publish any literature.

123. In cross-examination on behalf of the Government of India the witness stated that the ANVC does not hold internal elections to choose the General Secretary and he was chosen by the leader Dilash M. Marak. He stated that the ANVC has its office at Tura Youth Hostel, in a house allotted by the Government. He stated that ANVC does not have written Constitution and its aims and objects are decided by collective decisions, in meetings. He stated that total membership of the ANVC is 202. He deposed that the Memorandum submitted to the Government of India displayed a tri-colour along with the symbol of the ANVC flag, i.e. the flag of ANVC and it is not displayed in the public. The witness stated that ANVC keeps changing its headquarters which is called "Chiram" due to police encounters which has claimed many lives of its cadre members. He stated that ANVC has a Chairman, a General Secretary of the ANVC looks after the Finance Department, Commander-in-Chief who looks after the cadre and one Mr. Arist Sengsrang who looks after the publicity of ANVC as Publicity and Organizing Secretary. In cross-examination he deposed that ANVC does not hold any public meetings and its activities are known only to its cadres. He also admitted that ANVC has published a table calender designed by the Public Secretary and that it does not have any bank account as it does not hold any money which is obtained from well-wishers. The average age of ANVC cadres is below 30 years; this is because people in that age group are physically active and capable of fighting.

124. RW-5 tendered his affidavit RW-5/1 and spoke about the aims and objectives of ANVC as creation of a separate State but within the Indian territory. He claimed that ANVC is not involved in any criminal activity and does not possess any weapons. According to him extortions in the coal belt areas were not by ANVC but other agencies. He claimed that the allegations of extortion, harassment, capturing business at Garo Hills, creation of fear psychosis were all false and that ANVC cadre members lived in designated camps where their activities were strictly regulated. The weapons possessed by its cadres were for self-defence and were in joint custody. He claimed that ANVC was fighting for the Garo people who were deprived of their development and also denied their right. Garo's lag behind in education compared with other two tribes.

125. He deposed in examination-in-chief that ANVC surrendered weapons in 2004 and that it plans to contest elections if the ban on its activities is lifted. According to RW-5 meetings of ANVC are held in designated camps and in Youth Hostel. He deposed that Mahindra Finance Company approached him to act as a recovery agent to re-possess vehicles of defaulters who do not repay vehicle advances in the Garo Hills. In cross-examination he stated that ANVC does not have a written Constitution but admitted that its structure has various designations like Chairman, Joint Secretary, Publicity Secretary etc. He stated that ANVC cadre is known as the Army. The witness expressed lack of knowledge about involvement of ANVC members in several cases but stated that he was aware about deserters. Three deserters left camps as they did not comply with the stipulated ground rules. He admitted that his Christian name was Bernard Mara. He admitted that he was granted anticipatory bail in a complaint registered by Mohindra Finance in Ri-Bhoi District.

126. In cross-examination RW-5 denied about violation of the ground rules by ANVC, under the Government's agreement for suspension of operations. He also admitted that ANVC does not participate in National celebrations like Republic Day, Independence Day festivals and that it does not organize any public meetings or cultural functions. He admitted that J.G. Momin is the Joint Secretary of ANVC. He mentioned that besides the calender and table diary no other written records exist, except documents furnished to the

Joint Monitoring Group. ANVC according to him does not maintain any records about the sums of money received by it or expenses incurred. ANVC also does not maintain records of weapons acquired by its cadre or about of their utilization. He stated that though the ANVC does not declare the identities of the office bearers the people become aware of it. He deposed that the ANVC cadres stopped indulging in illegal activities after the ceasefire and they no longer use the formal army designations. He stated that whenever they receive information about illegal activities by other groups, they pass it on the police who even helps them. He stated that no one invites people to join ANVC but they volunteer to join it. He also stated that office bearers of ANVC do not meet and that directions are issued by the leader to the Chairman who is the supremo of the organization, verbally the ANVC Office bearers can act only after taking his consent. The witness was shown CW-12/2 calender and CW-12/3 table calender; he stated that they were issued by the Publicity Secretary of AMVC. He stated that the photographs were taken mostly before the ceasefire. He denied that CW-12/4 and its translation CW-12/5 were issued by ANVC.

127. The entire evidence led on behalf of the Government points to ANVC or its cadre members indulging in acts of extortion, kidnapping ransom etc. According to CWs 10 to 16 and CW-17, the activities of ANVC were mostly in the District of Garo Hills in Meghalaya. CW-7 also spoke about its activities in two other Districts and unrest among other peoples such as the Khasis and the Jaintia's. The allegations in these affidavits, depositions and the cross-examination may be briefly summarized as follows:

- i. Between 2005 and 2007 16 incidents were reported leading to lodging of FIRs. Copies of some of FIRs had been produced along with affidavits CW-10 to CW-16.

2. The Tribunal no doubt performs and adjudicatory role. In that sense it has to weigh the probabilities of two conflicting versions. Here it is asserted on behalf of the State through CW-6, CW-10 to CW-16 and also through CW-17 that a number of incidents were reported and FIRs recorded. No doubt originals of those FIRs were not produced. However, many of the copies produced alongwith the affidavits are true photocopies of the certified copies. ANVC availed of its full opportunity to cross-examine in the witness. At no stage during the cross-examination, conducted exhaustively was any objection taken that copies of such documents could not be marked in evidence in the absence of originals; secondly counsel also did not specifically put any question to the witness concerned that those documents were not genuine are not copies of the original. No line of questioning to the effect that such incidents did not took place, were also not suggested.

Having regard to the nature of the proceeding which is adjudicatory but yet procedurally in the form of an enquiry under the code, the conclusion which the Tribunal has to draw is to be based necessarily to be founded on the probabilities. Therefore, in the light of the above discussion, the conclusion which has necessarily follow is that the copies of FIRs are to be considered. They indicate the following pattern :—

1. Recovery of weapons including AK series, 9mm pistols, magazines, handgranades;
2. Attacks and killings, (Williamnagar P.S. Case No.52 (11) 2006, Williamnagar P.S Case No. 56(12)/2006, 57(12)/2006, 58(12)/2006, 59(12)/2006 & 60(12)/2006 and Tura P.S. Case No.39(4)/2006 and on various dates between 29th January, 2006 and 2nd July, 2006.
3. Firing at armed forces personnel [FIR No.20(5)/2005 under Section 307/326 IPC read with Section 25(1)(a) Arms Act] leading to recovery of pistol and ammunition;
4. Intimidation of people and the business community and preventing free trade. These include ban on sale of DTH technology, imposition of illegal taxes such as Rs.5/- per kilo on dry fish, collection of unauthorised and illegal tolls/taxes, capturing of rights for sale in haats, intimidation of traders in the coal belt in various Districts of Meghalaya etc.

5. The witness of the State and Government of India have uniformly spoke about ANVCs leadership hiding in Bangladesh in save havens. None of the witness of ANVC were willing to disclose the whereabouts of their leaders. It is also a matter of record that the list of ANVC cadres provided to the Central Government and the Joint Monitoring Group never included the mention of any leader.
6. The ANVC cadres moving around with weapons. CW-17 mentioned that only 16 weapons were surrendered. CW-10 also made a similar statement and deposed that all weapons were not kept in a neutral place but kept in ANVCs liaison office;
7. The ANVC cadres continuing to use style uniforms and battle camouflage for their activities.
8. Targetting the business community in particular, and indulging in extortion, kidnapping, etc.

128. The attempt of ANVC through depositions of its witnesses and during arguments was consistently to project that whatever be its action in the past, no fresh grounds for declaring it unlawful were made out. Its emphasis was that after the ceasefire or suspension agreement, of July, 2004, all changed, and that the ground rules, in all the substantial and main particulars were being followed. One strong argument was that the Central Government has extended the agreement till July 2007. During the hearing, frequent endeavour was made to establish that in the relevant meetings of the Joint monitoring group, no serious acts of intimidation, unlawful activities or extortion, killing, etc., were highlighted. The insinuation was that in the absence of mention of such activities, the State and Central Government cannot now complain that the ban has to be imposed. In other words, when conscious decision to further the peace process is made, and the agreement to extend it is taken, there is no ground to declare the organization as unlawful. An attempt was made to say that if there were acts of violence or extortion, looting etc., the ANVC cannot be held responsible, since it disclosed weaponry, surrendered it, and its cadres are in designated camps.

129. There is no doubt that the Central Government, in its wisdom, extended the ceasefire, or suspension of operations agreement. Yet, that cannot alone be conclusive; the Tribunal cannot *ipso facto*, on the basis of that decision, conclude that the activities of ANVC are not unlawful; nor can there be an argument of estoppel, since the decision to confirm or cancel the notification under Section 3(1) has to be on the basis of materials placed on record, and not merely a decision taken on the basis of a political determination, as indeed the agreement to suspend operations is. In other words, the task of the tribunal has to be undertaken independently, on the basis of materials placed before it, and tested through the adversarial process, by the association which seeks to show cause that its activities are lawful, and not unlawful.

130. A careful analysis of the testimony of RW-4, CW-17 and CW-10 would show that ANVC had been furnishing separate lists of its cadres to the Joint Monitoring group. Though an explanation about confidence building, and progress achieved through extension of ceasefire was given, the fact remains that inconsistency in such basic particulars, coupled with the admitted attrition ratio from the camps (the ANVC witness claiming those leaving the camps to be deserters over whom it has no control) shows that several members of its cadres left the camps where they were supposed to be housed, as part of the agreement. Similarly, these witnesses deposed that all weapons were never placed in joint custody, in a neutral place, but in the ANVC liaison office at Tura, under its control. Further, only 16 weapons were surrendered. These beliefs and the contention that ANVC always intended to comply with terms of the ground rules, in letter and spirit. These also lend credence to the official version that such cadres are moving about freely, and are armed with sophisticated weapons.

131. The ANVC's organization as shown through these proceedings, presents a curious picture. According to the witnesses led on its behalf, it has no written constitution, but professes to achieve a state of Garoland through peaceful means. If that is the real objective, nothing prevents its leadership from coming out openly, and engaging with the Central and State Governments. Instead, the ANVC's secretive behaviour is all too writ large; it conducts meetings at Cheram, without prior intimation; its office bearers are hand-picked by its Chairman, Dilash Marak, who has chosen to stay away, not disclosing his whereabouts. Though it claims to have a wide following among the Garos, it is undeniably an unregistered organization; it secures substantial funds and amounts, but does not even open a bank account. Exhibits CW-12/2 and 12/3 were indisputably published by it; they are calendars of 2007; one of them contains pictures and photographs of several cadres.

members, including those clearly described as “deserters”. Several photographs show the cadres in combat uniforms, as if they are members of the regular army; they are shown bearing arms, and in active training. The belated attempt of RW-5 who admitted that the calendars were indeed published for 2007, to explain the photos are those having been taken in 2004, rings hollow, because the specific mention of “deserter” cannot imply any meaning before the ceasefire agreement. RW-5 virtually supported the assertion of CW-17 and arguments on behalf of the Central Government, that ANVC maintains an army, whose leader is called the Commander in chief, and its cadres have military designations. In fact, this is also borne out from the list filed along with the depositions of RW-4.

132. The possession of sophisticated and banned weapons, which is a matter of reasonable inference, drawn from the various recoveries spoken to by witnesses of the State of Meghalaya; and the Union of India, as well as the unchallenged testimony of CW-10 and CW-17 that only 16 weapons were surrendered, whereas the others were kept under control of ANVC, as well as the unacceptable explanation obliquely given, i.e., that they were used for self defence purposes, is again indicative of the ANVC cadres continuing to be at large and armed. There can be no reason why anyone would need such banned weapons, much less for purposes of self defence. The nature of weaponary, i.e. SLRs, AK-47 Guns, rifles, Chinese 9mm Pistols, hand grenades, live ammunition, belie the peaceful intent of ANVC; they contradict its avowed peaceful objective of achieving Garoland by abjuring violence.

133. CW-13 had spoken about ANVC cadres having multiple identities; some of the persons named in the FIRs mentioned in the proceedings had several aliases; in fact, even RW-5 had an alias. These show that the possibility of deserters or those discharged from the organization, continuing to work for it, outside of its structure, in a concealed or camouflaged manner, is real, and cannot be ruled out. Further, the conflicting lists of members shown on different times, and the delay in furnishing full list of weapons, or members, all of whom do not stay in the three designated camps, show that ANVC is either deliberately not adhering to the ground rules, which in turn support the theory that it constantly regroups, or that it is unable to exercise control of its cadres, and is anarchic. Either way, this poses a threat to peace and security, in turn disrupting the territorial integrity.

134. In view of the above discussion, and after careful consideration of all the materials, evidence placed before it, and submissions on behalf of parties, the tribunal is of the opinion that the ANVC carries on unlawful activities, which are detrimental to, and intending to disrupt the territorial integrity of India, in spite of its ostensibly declared objective of achieving statehood for Garos through peaceful means. It has not abjured violence, and continues to engage in acts that are subversive, and disruptive of, detrimental to, or acts with intention to disrupt the territorial integrity of India. Therefore, the tribunal is of the opinion that is an unlawful association, and the declaration under Section 3(1), so far as it is concerned, has to be confirmed.

ORDER OF THE TRIBUNAL

In view of the above discussion and findings, the Tribunal, in accordance with Section 4(3) of the Unlawful Activities (Prevention) Act, 1967, hereby confirms the Notification No. SO 1974(E) issued by the, Ministry of Home Affairs, Government of India, dated 16th November, 2006 declaring the Achik National Volunteer Council of Meghalaya and the Hynniewtrep National Liberation Council of Meghalaya, as unlawful associations, in terms of Section 3(1) of the said Unlawful Activities (Prevention) Act, 1967.

S. RAVINDRA BHAT
Judge, Delhi High Court, Presiding Officer,
Unlawful Activities (Prevention) Tribunal.

New Delhi

Dated 14th May, 2007

[F.No.11011/49/2006-NE-III]

NAVEEN VERMA, Joint Secretary